

DOI National Indian Trust Administration and Reform Commission Meeting 1

March 1-2, 2012

Washington, D.C.

Meeting Summary

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National Commission on Indian Trust Administration and Reform

Executive Summary

The inaugural meeting of the National Commission on Indian Trust Administration and Reform was held March 1 and 2, 2012, in Washington, D.C. at the National Park Service Building. Fawn Sharp, Quinault Indian Nation, chaired the meeting. Sarah Palmer of the U.S. Institute for Environmental Conflict Resolution (US Institute or USIECR) and Saman Hussain, DOI Office of Collaborative Action and Dispute Resolution (CADR) facilitated the meeting.

The meeting opened with remarks from Secretary of the Interior Ken Salazar, Deputy Secretary David Hayes, and Solicitor Hillary Tompkins. The Secretary encouraged the Commissioners to think broadly, as they fulfill their duties and to consider what is in the best interest of tribes and Indian people as the guiding principle for their work. The Secretary also emphasized that recommendations from the Commission should support self-determination and a meaningful government-to-government relationship.

During the two-day working session the Commissioners heard about the Department of the Interior's current and historical work related to Departmental trust reform efforts from the Office of the Special Trustee for American Indians and the Bureau of Indian Affairs; the status of the Cobell appeals and settlement process; and the budget to support the work of the Commission. Commissioners discussed the importance of defining the meaning of the trust relationship, recognizing that it goes beyond, and is deeper than, the systems used to manage and administer trust assets. Commissioners reaffirmed that the trust relationship itself is an important aspect of their work.

Commissioners attended to the administrative aspects of the Commission work discussing and drafting a work plan and approving a set of operating protocols. The Department's Office of the Solicitor oriented Commissioners to their duties as a commission under the Federal Advisory Committee Act (FACA). Commissioners discussed the importance of reaching out to Indian Country about their work and discussed outreach approaches to include in the forthcoming Commission communication strategy.

The Commission formed three subcommittees that will report back at the next Commission session.

- Trust Relationship Subcommittee: led by Chair Sharp and Commissioner Anderson. To explore the definitions and foundation of the trust relationship and how it can be integrated as a part of the Commission work.
- Research Subcommittee: led by Commissioners Anderson and Leeds. To review reports, various documents that relate to the work of the Commission.
- Trust Models Subcommittee: led by Commissioners Zah and Leeds. To explore other trust models used by federal, tribal and other governments and private sectors.

In addition to forming subcommittees, the Commission came to agreement on several items, including:

- Commission Operating Protocols
- Dates and locations for next three in-person meetings for 2012
- Set a quarterly schedule for calls and webinars
- USIECR to serve as facilitators for the Commission

Members of the Commission are:

Chair, Fawn R. Sharp is the current president of the Quinault Indian Nation, the current President of the Affiliated Tribes of Northwest Indians, and a former administrative law judge for the state of Washington and Governor of the Washington State Bar Association.

Dr. Peterson Zah is a nationally recognized leader in Native American government and education issues. Dr. Zah served as the last Chairman of the Navajo Tribal Council and the first elected President of the Navajo Nation.

Stacy Leeds, citizen of the Cherokee Nation, is Dean and Professor of Law at the University of Arkansas School of Law and former Director of the Tribal Law and Government Center at the University of Kansas, School of Law.

Tex G. Hall is the current Chairman of the Three Affiliated Tribes and past president of the National Congress of American Indians. Mr. Hall currently serves as Chair of the Inter-Tribal Economic Alliance and is the Chairman of the Great Plains Tribal Chairmen's Association.

Bob Anderson is an enrolled member of Minnesota Chippewa Tribe, currently Professor of Law and Director of the Native American Law Center at the University of Washington. Mr. Anderson worked as Associate Solicitor for Indian Affairs and as counselor to the Secretary of the Interior on Indian law and natural resources issues from 1995-2001.

Jodi Gillette, Deputy Assistant Secretary - Indian Affairs for Policy and Economic Development, serves as the Designated Federal Officer for the Commission.

The Commission will meet in-person three additional times in 2012. The schedule pending final approval is June 11-12, 2012 in Albuquerque, NM; September 13-14, 2012 in Bismarck, ND; and December 6-7, 2012 in Seattle, WA.

The Commission will hold an administrative conference call in April and a webinar open to the public in May. The dates and times for these calls will be posted to the Commission website:

<http://www.doi.gov/cobell/commission/index.cfm>.

Thursday, March 1, 2012

Invocation

Vice Council Chairman Suppah of the Confederated Tribes of Warm Springs, Oregon provided the invocation.

Opening Remarks

Commission Chair Fawn Sharp welcomed everyone to the meeting and opened the inaugural meeting of the National Indian Trust Administration and Reform Commission on March 1, 2012, at the National Park Service building in Washington, DC. Chair Sharp noted that this is the first day, first moment, first minute of an incredible journey. The Commission will work with the Department of the Interior (DOI), tribes, and communities throughout the nation hand-in-hand to develop recommendations regarding trust reform. There is interest in the Commission from across the tribes. Tribes have a vibrant history of work and now a 22-month period to develop a collaborative relationship with the U.S. Government. The Commission will develop accountability – in how we set our direction and how we relate to the federal government and the DOI. The meeting agenda through today, and tomorrow as well, is exciting. The critical thing to come out of the meeting is a communication plan and how to move the Commission agenda forward in a short period of time. We want to leave with a plan of action to roll out to Indian Country as well as a communication plan. Chair Sharp hoped the Commission will look for early successes and communicate with tribal leadership to encourage their participation. She shared that the Commission will look at the history of trust reform, roles and responsibilities, and look at these issues with an eye to the future. There is hope and this is a new era for the tribal relationship with the U.S. Government.

Chair Sharp reviewed the agenda for the day. (See Trust Commission Website: <http://www.doi.gov/cobell/commission/index.cfm>).

Department of the Interior Secretary Salazar noted that this is a historic day, one that is a huge milestone that will hopefully mark years and decades in time ahead in terms of the U.S. and the trust responsibility of the Department. Secretary Salazar asked all those in attendance to introduce themselves and the group they represented.

Secretary Salazar recognized and thanked each of the Commissioners and Chair Sharp for her leadership. The Secretary acknowledged how important the Commission is to all, that trust reform is important and is something the President of the United States has asked the Secretary to do. The Secretary shared that when beginning work at the Department of the Interior, the one thing he knew he would deliver on are the promises he made on behalf of Indian Country. Looking back over the last three years, at the leadership of Deputy Secretary Hayes and Solicitor Tompkins, the Department has done great work. There has been progress on lots of different fronts, issues that have been on hold for a long time are being addressed, and the Department is working on a number of items. Issues of tribal law enforcement have reduced violent crime as much as 36%. The Department is looking at economic development of renewable energies. The Cobell settlement that Deputy Secretary Hayes and Jodi Gillette led on behalf of the Department is a crown jewel at this time in Interior. This would not have happened without the persistence of Eloise Cobell. What was once a lone voice ultimately brought about the voice for all and a

\$3.4 billion settlement for Cobell. This work is important because it reflects work on trust assets on behalf of Indian Country.

The Secretary noted that the Cobell settlement is a great opportunity but also comes with great risk. What will tribes and individuals do with the money? How will long lasting true reform efforts move forward? Will tribal nations and individuals be in the same situation 100 years from now? Will there be a judgment in history when people look back and see a squandered opportunity? Secretary Salazar expressed hope that people will say that they moved forward with true reform efforts. The problems of the past will not happen again and the Department will do right by way of investment and by way of Indian nations and First Americans. This is a very broad responsibility.

Secretary Salazar spoke about his expectations about the breadth of the Commission charge. Stating that the Commission may decide just to reform trust management or alternatively may decide, as a Commission, to do something beyond reforming trust management. He stated that the Department is receptive. If the Commission, in consultation with the tribes, decides the U.S. government should move management of trust assets to a bank, then tell the Department. If the Commission believes the trust assets would be better managed in the Department of Treasury, then let the Department know. If on the other hand the Commission believes the Department is the right place to manage trust assets that is fine. There are strong arguments for the Department to manage trust assets. History has given responsibility to the Department. Secretary Salazar stated that he wants specific recommendations on how to avoid the problems of the past. He encouraged the Commission to be aggressive in their thinking and provide the best recommendation. He continued that the only North Star to guide the Commission is what is good for the tribes and what is good for Indian people who have individual Indian money accounts. Nothing else should matter. This is a very broad charge for moving forward.

Secretary Salazar urged the Commission to move forward to get as much moving forward as quickly as possible. The Department wants to be prepared to move forward once the Cobell appeals conclude. The Department put the Commission together to move forward. When reading the Secretarial Order this morning, the Secretary thought maybe two-years might be too long. If the Commission can complete its work in three months, go out and get it done. Consultation is important; if the charge can be fulfilled sooner, then get done sooner.

The Secretary remarked that one of the great things done in the Department has been to be an inclusive government. Historically the Assistant Secretary of Indian Affairs have short tenures in the Department and work is not completed. Assistant Secretary Echo Hawk has a tremendous team and with Michele Singer doing such a great job, we are seeing something that hasn't happened in a long time. We have good relationships with Indian Gaming. These changes are long lasting. The Secretary is working on many issues with Solicitor Tompkins and shared that when he thinks of the Navajo reservation and standing at Window Rock with Assistant Secretary Echo Hawk, he is reminded of how far she has come. The work that the Department does, whether at Navajo or Crow, has a real impact on the lives of people. The Secretary reiterated how very serious he was about the North Star, and stressed that if the Commission has recommendations the Department can implement, that is what he wants.

Secretary Salazar reflected on the early days of the Administration and meetings where people would say there was no need to keep Cobell going – it was not a resolvable cause. The Secretary shared that he made the decision early on not to follow the advice of some people saying the litigation was not solvable. Deputy Secretary Hayes was the lead person convincing the Department to continue to address the Cobell litigation and to work on the settlement of other tribal court cases. Jodi Gillette, the

Commission's Designated Federal Officer (DFO), has the Secretary's full confidence and the confidence of the President of the United States and the Department team. Secretary Salazar concluded that the Department is here to help the Commission do the best job.

Deputy Secretary David Hayes welcomed the group and shared that within the first week of coming into the Department, the Secretary came to a handful of staff and gave each of them little cards that listed priorities. *"Energy and climate change – changing energy economy and focus on renewable energy. Treasured landscapes – Great Outdoors America. Renew commitment to first Americans."* It was there from the beginning as a priority for the Secretary and the Deputy Secretary. Deputy Secretary Hayes noted that another aspect of the Secretary Salazar is that he is impatient. Two-years (the duration of the Commission) is to the Secretary like a lifetime. Deputy Secretary Hayes observed that it is an incredibly good gift to have an impatient Secretary, so impatient that the Commission was not to begin until the settlement was complete. It wasn't supposed to come into effect until the fall or when all appeals were complete. The third aspect of the Secretary is, as he has already demonstrated, his personal commitment to getting in the weeds and getting things done. When needed, in the Cobell litigation he was eager to join in meetings. He was eager to have Eloise in his office talking through issues. Deputy Secretary Hayes acknowledged what a high quality Commission is in place and expressed great appreciation for the commitment they bring. Deputy Secretary Hayes then introduced each Commissioner:

- The Department is happy to have as Chair, Fawn Sharp. Fawn R. Sharp is the current President of the Quinault Indian Nation in Taholah, Washington. Ms. Sharp is also President of the Affiliated Tribes of Northwest Indians (ATNI). Deputy Secretary Hayes remarked that, 'she blew us out of the room with her commitment that the Cobell settlement is not the end but the beginning of trust reform'.
- Dr. Peterson Zah. In 1982, Zah was elected Chairman of the Navajo Tribal Council. In 1990, under a new tribal government, Peterson Zah was elected the first President of the Navajo Nation, leading the movement to restructure and modernize their governmental system from a council to a nation. This makes Dr. Zah the last Chairman of the Navajo Tribal Council and the first elected President of the Navajo Nation. Deputy Secretary Hayes shared that Dr. Zah has been a true champion of Native American rights for many years.
- Stacy Leeds serves as Dean and Professor of Law at the University of Arkansas School of Law in Fayetteville, Arkansas. Dean Leeds has served as a judge for many tribes including current appointments as the Chief District Court Judge for Prairie Band of Potawatomi, Chief Justice for the Kickapoo Tribe of Oklahoma and Chief Justice for the Kaw Nation Supreme Court. She served as a Supreme Court Justice for the Cherokee Nation from 2002-2006. She has a long and distinguished career serving Indian Country.
- Bob Anderson is a long serving, committed public servant for Indian Country. Mr. Anderson is a Professor of Law and Director of the Native American Law Center at the University of Washington. He also has a long-term appointment as the Oneida Indian Nation Visiting Professor of Law at Harvard Law School. From 1995-2001, he served in the Clinton Administration under Interior Secretary Bruce Babbitt, providing legal and policy advice on a wide variety of Indian law and natural resource issues. He was the go-to guy on any tough Indian issue in the Clinton years.

- Tex G. Hall is a Chairman of the Great Plains Tribal Chairmen's Association. Mr. Hall is the current tribal Chairman of Three Affiliated Tribes, a position he also held from 1998 to 2006. Mr. Hall is also a former President of the National Congress of American Indians (NCAI). He is a true leader and will be terrific.

Deputy Secretary Hayes reported Megan Conklin was Associate Deputy Secretary and was helpful in getting the Commission started. Ms. Conklin is leaving the Department and regrets not being able to help with the Commission. He thanked Jodi Gillette, Kallie Hanley, and Lizzie Marsters for their assistance in bringing the Commission together.

Deputy Secretary Hayes reiterated the Department's openness to what the Commission should be looking at long term and encouraged them to look at how best to handle trust assets and how to best serve Indian Country. Get to the fundamental issues in terms of how the Department should do that. He emphasized that the Department wants to provide good service to its customers. He asked the Commission to help the Department figure out how it can best perform its services. Deputy Secretary Hayes thanked the Commission and is looking forward to seeing their work. The Department will support the Commission in any way it can.

Deputy Secretary Hayes **introduced Hilary Tompkins** the first Native American Solicitor. Solicitor Tompkins welcomed everyone, and remarked that it was a pleasure to be there. Solicitor Tompkins noted that the Department has been thinking of these concepts related to the Commission and trust reform for so long and to actually see everyone there in real life is heartening. Solicitor Tompkins remarked that it is such a privilege to serve as the Department of the Interior's Solicitor. She noted that it has been quite a journey and a huge honor and privilege to work with the Secretary and the Deputy Secretary. She is honored to share in their commitment to make tangible, substantive change in the government-to-government relationship.

Solicitor Tompkins observed it is very apparent what decades of litigation had done to the government-to-government relationship – adversarial interactions, mistrust, and a focus on litigation rather than policy-making. The Department's commitment to resolve cases is so critical to moving forward in the next chapter. She remarked that in Cobell what is critical is to resolve past disputes – it is not the end all. It is important that everyone think about going forward, how are tribes and the U.S. government not going to run into the same outcome again. She emphasized the need to think of a way to do it differently, to communicate and to evaluate how to increase cohesiveness, collaboration, and communication to minimize future conflicts. Solicitor Tompkins stated that it is critically important to work on the government-to-government relationship with individuals and nations within the Executive realm of authority. Entering the Judicial realm changes relationships and obligations. What is the right way to fulfill trust responsibilities? She noted that with the Commission, the Department is starting the process today. In the era of self-determination, there is a government-to-government relationship. "What does this mean in this time? How are the decisions that are going to be made here helping to implement that policy?" Solicitor Tompkins offered her help to support the Commission, underscoring the Solicitor's office commitment to working with the Commission in finding that pathway forward. Solicitor Tompkins reflected that when she worked with the Navajo Department of Justice, she learned a lot about the peacemaking courts. She recalled being in one of the Cobell negotiation sessions and said to that group, "there is a way to make peace together". The western court system is an option but the traditional system of peacemaking is also an option. Solicitor Tompkins stated that hopefully Cobell

would be resolved this spring. She thanked the Commissioners for volunteering their time and remarked that they will do great things.

Secretary Salazar closed the opening remarks noting, “Your charge is clear and you have a great Commission and the right staff to support you – the world is yours to define.”

Overview of Federal Advisory Committee Act (FACA) Requirements

Tim Murphy, the DOI Solicitor’s Office, provided an overview of FACA requirements, dispelled myths about the FACA, and shared how it impacts the Commission operations. The full presentation may be found on the Commission [website](#). Congress passed FACA in 1972 to regulate the profusion of outside interests advising federal agencies on what to do and how to operate, while others were outside of that process and there was minimal, if any, transparency. There are procedural rules that must be followed when using advisory committees. FACA is primarily a procedural law that ensures transparency when non-governmental entities provide advice to the government. FACA does not impact the content or substance of the work of advisory committees.

When does FACA apply? It applies to a group established or utilized by the Executive Branch for the purpose of utilizing advice. The law does not apply to individual advice and it does not apply to operational committees. It also does not apply to exchanges of facts or information. Violations of FACA don’t result in criminal penalties or fines. It is instead a means for an affected party – if they believe FACA has been violated - to sue and/or delay a process.

FACA is supposed to engage in advisory functions only. Other types of groups can be given legislative authority from Congress. FACA committees may be established by President, by legislation, or as a discretionary committee of an executive branch agency. The Indian Trust Commission is a discretionary committee established by the head of the Department of the Interior. FACA requires that the Department file a charter for the Commission and that the Charter include the authority, goals, and objectives. The Charter is very important – it sets the parameters and proper role of the Commission. Look first at the charter to answer questions about the Commission and its purpose.

The FACA requires maintenance of a balanced membership on the Commission and it requires open records. The Department must maintain all committee documents for public inspection. These documents must be release if requested for under the Freedom of Information Act (FOIA). FACA also requires the Commission to hold public meetings. It requires opportunity for public input – most usually opportunity for public comment at the meeting. Commission meetings must be announced in the Federal Register at least 15-days in advance. Detailed public minutes are another basic requirement. The Designated Federal Officer approves and calls meetings, etc. The committee terminates¹ according to statute or when its authority is complete. Other things to note: the operation of sub-committees. Sub-committees are not required to be open to the public as long as they are not providing advice or input to the federal agency. Subcommittees must bring their advice to the full committee for full and open deliberation before the committee transmits something to the federal agency.

¹ Administrative note: Advisory Committees may also terminate if their charter is not extended after the first two years of work.

Mr. Murphy introduced Ed McDonell from the DOI Ethics Office. The Commission may go to Ed with questions of ethics. Mr. McDonell's contact information is in the training information that the Commissioners completed.

Commission Questions Regarding FACA

Commissioner Zah: As Mr. Hayes indicated the Cobell appeals process is going on. Does anyone know what the process is all about and the estimated guess of when the Commission work kicks in?

Solicitor Tompkins: There are two sets of appeals. One appeal is being briefed with oral appeals. There is another hearing in May. There are no rulings on either appeal. The Department's sense is sometime this spring. Depending on the outcome, there may be 90-days to seek review by the Supreme Court. The Commission can move forward with its work and does not have to wait for final approval of settlements. Some of the funding can be provided to support the Commission but the Commission can function independently of the settlement and appeals process.

Commissioner Anderson: Public meetings are a requirement. What if we have conference calls to discuss issues – do they have to be public?

Tim Murphy: There are two basic exceptions, 1) if it is all administrative and there is no development of advice or it is preparatory the call does not have to be public and 2) sub-committee work does not have to be public. The answer is no, provided it is all administrative and no deliberations are done in that capacity.

DFO Gillette: What if the Commission decides they want to do deliberative work?

Tim Murphy: That is work of the sub-committee. Anything that comes forward from the subcommittee has to come forward to the full committee.

Commissioner Anderson: What about the idea of a research assistant doing research of files? Should those be transmitted to the Department?

Tim Murphy: No. Background material does not have to be transmitted. Anything that is going to support a recommendation of the subcommittee to the full committee should be maintained as a record. Anything presented here is a record. Your own research and knowledge gathering is not needed as part of the record, unless you make it so.

Audience Questions Regarding FACA

Audience: When and how are subcommittees created?

Chair Sharp: Based on the choices of the Commission. There is a provision in the charter on pg. 14.

Tim Murphy: It is left to the discretion and needs of the committee.

Audience: Proceedings will be public information – will they be on the website?

Regina Gilbert: We will provide a link to the public website:

<http://www.doi.gov/cobell/commission/index.cfm>

Audience: What about confidential information from tribes. If they want to provide information from tribes can they provide it confidentially to the Commission?

Tim Murphy: That is difficult. Documents shared with the Commission will have to be public.

Overview of the Commission Budget

Pam Haze, the Department of Interior Deputy Assistant Secretary for Budget, Finance, Performance and Acquisition, provided a review of the Commission budget. Ms. Haze has been at the Department for 34 years and worked in three or four bureaus. She noted that being before the Commission today to talk about the work of the Commission is daunting and humbling. She saw this as a momentous occasion, mirroring comments of the Secretary, Deputy Secretary, and Solicitor. Ms. Haze reiterated that the Department is looking to the Commission to do great work.

Ms. Haze reported that the Department's annual budget is \$10-11 billion. The Cobell settlement, at \$3.4 billion, is one of the most expensive appropriations that she has seen in her career. The next largest was the recovery appropriation that was \$3 billion. There is a much smaller amount of money in support of the Commission. The time during the Cobell lawsuit and settlement was long and arduous for tribes and the Department. The Department learned a lot about how to work with tribes and Indians, and needs to learn more. Being in the budget arena and working on Indian programs is challenging. There are unique and different needs from the Department. Ms. Haze continued that she felt fortunate to work with the people enacting the settlement. There is now an opportunity to move forward and the settlement and the Commission will help to move trust reform forward.

Ms. Haze asked the Commission to identify their budgetary requirements and the Department will work through that to help the Commission meet its needs. Tiffany Taylor, who works for the Assistant Secretary for Indian Affairs (IA), and Jodi Gillette to help formulate the budget. Mark Davis in the Office of the Special Trustee for American Indians (OST) is the other part of the team. Ms. Haze shared that the Cobell settlement is large and included within the Cobell legislation is a clause whereby up to 15% of land consolidation funds could be used for support of the Commission. In the interim, pending court approval of the settlement, the Department will work to address the budgetary needs of the Commission in a temporary fashion. Ms. Haze is working with IA and the OST to identify money to support the needs of the Commission. This is a temporary resolution until the settlement and money becomes available. Ms. Taylor is working to formulate the budget. IA and OST have already committed \$110,000 for the Commission of which, \$25,000 is for Commissioner travel, \$65,000 for facilitation, and a small amount for other costs.

The Department wants to work with the Commissioners to see how to manage those funds until the Cobell money is available. Consider the time/duration/co-location of meetings. How will the Commission work be framed going forward? If there are subcommittees there may be costs as well. Consider forming a budget subcommittee. The Department can help the Commission develop recommendations regarding costs. A big part of the task at this meeting is to help the Department figure out what the Commission will be doing and how to be successful.

Commission Questions Regarding Budget

Chair Sharp: One of the tasks of this session will be to create a scope of work and a budgetary proposal. What is the process to get approval of a budget for what we recommend?

Pam Haze: In this temporary period, before the case is settled, there could be a little more delay because resources will have to be identified. That is why I am suggesting a subcommittee we can work with. Iteratively we can decide what the needs may be. We are pretty good at being responsive. The Secretarial Order does allow for the use of consultants. There has been some discussion regarding the wealth of information and we want to help you look at that information before contracting new work

but may need this type of help in the future. We need to be prudent in the beginning identifying a plan and then looking at the resource needs.

Commissioner Leeds: How do we engage consultants?

Pam Haze: We might be going to the IA or OST contracting office. We will have to determine what the resources are. Timeliness is important.

Commissioner Zah: That question is important. Because of the settlement there are a lot of local landowners that may not speak the English language and there has to be some accommodations to help those people. If we can improve communications through consultants, that is important.

Commissioner Anderson: If we decide there is a regional tribal meeting and we want to send representatives, you will help us fund this outreach?

Pam Haze: Two things – we help you plan for outreach and determine appropriate funding.

Commissioner Anderson: Section 4d of the Charter – the Department shall use available funds to hire a management consultant. Is this done? What is the intent?

Sarah Palmer (USIECR): Based on the Secretarial Order and the Charter the management consultant is to do a review of the trust management system and then that information is shared with the Commission.

Chair Sharp: This management consultant is very significant. We need to evaluate the complexity of the systems while we are looking at the history and previous work. This is the main thing to drive problems we seek to solve. Scoping is necessary to engage tribal leadership to plan and scope this assessment. We will be engaging tribal leadership regarding possible solutions.

Pam Haze: It's important to see what information is available and where there are the gaps. I might suggest a subcommittee to help bridge between the Department and the Commission.

Audience Comments Regarding the Commission Budget and Tasks

Audience: I would encourage the Commission to consider inter-tribal organizations and those that have large land-based organizations. Those are starting points where you may run into challenges. Our tribes will assist the Commission as much as possible.

Audience: I encourage the Commission to look to experts that tribes have brought in as part of the settlement process. One concern is redeveloping processes that have already occurred. When looking at consultants, look at who tribes have selected in the past. There is a massive learning curve and there are experts out there.

Overview Requirements and Charge of the Commission

Meeting facilitator, Saman Hussain, DOI Office of Collaborative Action and Dispute Resolution (CADR), reviewed the interim ground rules. The Commissioners approved the interim ground rules.

Jodi Gillette, Designated Federal Officer (DFO), reviewed the Charter and Secretarial Order (available on the Commission [website](#)). Ms. Gillette stated that it was an honor to sit amongst the brightest and most experienced people in this area. She was humbled to sit in this capacity as the DFO. She shared that the Commission work comes from all who take the kind of charges that are about our ancestors and the relationships that have been formed. The work is really critical to making the relationship better. Ms.

Gillette continued that there is a need for the right energy in the room and it is critical that the Commission take action. There has been a lot of talk, discussion, research to improving trust administration and the work has come a long way. The settlement and the lawsuit have resulted in a place that we can be proud to be a part of this mission. The devil is in the details and part of the work done prior to this meeting was to try to determine how the Commission may want to move forward. At present there is a budgetary constraint. The Commission and the Department need to orient ourselves around where we want to go. The Secretarial Order is pretty clear. There is a little bit of confusion regarding how the Commission is linked to the Cobell settlement. It [the Commission] is connected [to the settlement] for purposes of funding. Like the speaker who came before me noted, the Commission is about the healing part of the settlement. The Department and the Commission are working on reform of the Indian trust. Look at the overall issues. The Commission is not just about land consolidation or the settlement. It is about the foundation of the relationship between the U.S. and tribes and the trust responsibility – how we manage that trust. We are going to look at more than the settlement, we are going to look at the big picture.

Ms. Gillette reviewed the Secretarial Order 3292. The key is that the Commission be looking at future responsibility; and not be limited to right now. “What is the vision for the Commission and how to move forward in the future?” This Administration has been working on this, even while settling Cobell. Section 2 highlights the Department’s and bureaus responsible for trust management and administration. How are trust management and administration evaluated from an objective point of view? We want the Commission to be part of the scoping process for the management consultant and find this is the best approach to a successful outcome. The Secretarial Order does state that the Commission will begin after the settlement but the Secretary, as noted, wants to move forward.

Ms. Gillette noted that if the Commission members are not be able to attend a meeting they may send another on their behalf, however, the alternate will not be sitting at the table with deliberative authority.

Ms. Gillette discussed the options related to the Commission report at the end of the Secretarial Order, noting that their recommendations do not have to be constrained by current law, [i.e., they could recommend new legislation or changes to existing legislation]. She stated that their report should be explicit and the Commission should address provisions that call for the termination of the Office of Special Trustee for American Indians. Sections d1-4 of the Secretarial Order will be in the scope of work for the anticipated management consultant. Ms. Gillette noted that it is important to make sure that whatever comes out of the Secretarial Order, will work with the Deputy Secretary’s office.

Ms. Gillette then reviewed the Charter that governs the Commission’s work. The Commission will work on evaluation, studies, audits, and various duties from the Secretarial Order. The Commission will guide and advise the Department in the scoping of the process.

Ms. Gillette noted that the Department will clarify all the Department roles later and noted that she is working closely with Michele Singer, Acting Principle Deputy Special Trustee (OST), and Mike Black, BIA Director. Prior to serving as Acting Principal Deputy Special Trustee in OST, Michele has experience working on similar processes. In Ms. Gillette’s role as DFO, she will serve as the primary contact and will be the conduit for communications to the Commission from the Department. She stated that she will work collaboratively as a partner with the Commissioners and she sees her role as that of a partner. The Commission budget estimate for one year is \$87,980. Ms. Gillette expects the Commission will meet at

least four times per year. There is a great team for the Commission to draw upon and find answers quickly.

Audience Questions Regarding the Commission

Audience: Timing – the Commission has a two-year timeline. All eyes on the fall, can we expect there to be interim recommendations to come out by fall?

DFO Gillette: This is to be determined.

Audience: On the Charter this does really reflect what the federal government will do regarding managing the trust. It doesn't include all trust assets. These limited definitions of trust – what do we do with those things that are not listed. This may be a limited look at trust assets. Today tribes manage half of all assets but we don't define that in today's day and age of self-determination. It is always about the federal government and in Indian Country the relationship has been imposed. There is the tribal side of what we are trying to do with trust reform. I don't know if this is the Commission's role or some other avenue but we do have to define what is the proper role for the relationship with Indian tribes today.

DFO Gillette: It is critical to have meetings open to the public and really good information to have as starting blocks for how we proceed.

Commission Discussion of Expectations and Draft Work Plan

The Commissioners reconvened after lunch and began initial discussion of the Commission work plan.

Commissioner Zah began the discussion reflecting on the history of the current status of the trust relationship and the processes that led to the Cobell litigation. He remarked that the class action lawsuit took many years and had so much grief, aches and pains. As a member of the Commission he would like to see a shortcut in some ways so that justice is served. He asked how do we do that, what mechanisms are available? He continued that the Commission has to devote some discussion to it. He shared that it is similar to the question asked in communities – “Who is responsible for raising the child? It's the parents. It's the schools. It takes a community, it takes a village.” Here the Indian people have a giant problem like this, where should a shortcut be without having to go through all the expense? As a single person on the Commission we should recommend, or discuss at least, how this could be done. Dr. Zah continued that he looks at the Navajo Nation and hasn't been involved in the work they do. When the community has a problem they go to the tribal council. If they are on the other side of the council, the avenues to discuss the issue is limited because they are on the opposite side of the council. The tribal council doesn't end up doing the right thing all the time. If a person wants to go to tribal court – they must have someone licensed to go to the court. Once in the system, when is the issue going to be resolved? It takes so long. The tribal courts say that they are backlogged and won't get to the case until a year later. What Navajo did was create a Peacemaker court. This was a third alternative to help resolve issues. It is like short-circuiting the traditional option. What do the Indian people do when they have something like Cobell? The problem is not the law; the law is already there. The self-determination act is the governing law of the land. In between law and justice, bureaucrats are in between who think their role is to give Indian people a hard time. They seem to think this is their function. There are instances that could be given like health issues. What will it take to move bureaucrats to do their job? What are your expectations? How do you plan in doing that [your job]?

Commissioner Leeds: We have a real unique opportunity, from the highest levels [Secretary Salazar] wanting concrete recommendations from us [the Commission]. I want to see the Commission

compartmentalize and prioritize which subjects we will tackle first. Indian Country is hungry to see what the Commission will develop. There is so much information already gathered that we are all familiar with, I think we can do research fairly quickly on what is broken. We can utilize listening sessions to discuss recommendations. We need consultation from tribes regarding options.

Commissioner Anderson: Another piece we need to figure out fairly quickly is this idea of a study, a consultant. Someone wisely pointed out there are many out there that have studied these issues. I hope we can hire someone who is familiar with all the history. That's everything from how the Bureau of Reclamation operates projects related to tribal in-stream flow rights, to the actual accounting of trust funds and how that is going to proceed. We are going to take our recommendations regarding how they are going to fix the system. The idea of a neutral agency that can manage without interference from the Departmental objectives.

Chair Sharp: After getting initially appointed, I quickly looked at the Secretarial Order and what struck me is that it seems to be focused on managerial and functional issues. I was really pleased this morning to hear the Secretary say this is not limited to trust, the Department is very open to hearing from the Commission and tribal leadership on all the other ideas out there. We need to act rather quickly in fixing the symptoms of the relationship with the federal government. It is not one of parity and equality. There are others in the agencies that want to see where tribes want to go. We need to do a great deal of work in the short term to address and fix the past; it is just as important going forward. How can we salvage and fix the relationship going forward for future generations? We want real dispute resolutions that won't require them to go through what we have to go through. When looking at our relationship with the U.S. and how to improve – we need to engage tribal leadership in this. What is going to happen in the field hearings? We will be hearing from everyone that has had contact with the Department and these should be as comprehensive as possible. In field hearings we need to ask, after we fix the past, what does the relationship look like in the future? An entire universe is open to us and we need to give that some thought as a Commission. We need to engage all interested parties. It will not do any good to fix the past and not lay a solid foundation for the future. We don't want to be the generation that lets that happen, we want to provide solutions. Looking at the charge and what the Secretary said, we want a plan of action, milestones, early successes, and a communications plan to be effective.

DFO Gillette: Some things all the Commissioners talked about was at least a sketch of a timeline. How do we make the bureaucrats do this? This isn't just an exercise; this will result in real time change for this issue. The scoping part – scoping out questions from parties is really important and I think what you said Commissioner Leeds about pitching ideas, it would be good to come with a little bit of something. It is frustrating to go out with nothing, people like to react and clarify and help formulate that discussion with something to react to. We have some time to go into that. It does seem like a place where we can go into that. We have had preliminary conversations with the Commissioners and some draft ideas were put together regarding a possible work plan and topics to pursue.

Chair Sharp: We will start with the overall plan to look at individual pieces of engaging tribal leadership.

Meeting facilitator Sarah Palmer, reviewed the draft Commission work plan (version 1) found on the Commission [website](#). Ms. Palmer stated that the draft work plan is intended as a starting point for the Commission to revise and make their own. Ms. Palmer explained that page one of the work plan cross-walks the duties of the Commission and anticipated products as described in the charter. The Commission duties include: input from the public, consider the nature and scope of the audits, review the provisions in the trust reform act. The Commission needs to consider whether it produces a single

product or a series of recommendations over time (e.g., a series of iterative recommendations). How and what the end product is defined as is important to tease out first in order to determine what you are driving towards in the timeline you have.

Commissioner Comments Regarding Draft Work Plan

Commissioner Zah: Between the time I received the letter from the Secretary and now, I went to a lot of sessions on the Navajo Nation and a lot of people say, "I have a letter from the Department of the Interior and it says for me to cash this check for \$.50 or \$.77. I'm not going to spend \$40 worth of gas to cash \$.50 check. You go out there and tell them to save themselves a stamp for the cost of sending these out." At the next meeting there were more people who have more checks like this. Is there a way to deal with this issue?

Chair Sharp: This can be part of what the Commission does. This goes back to barriers and relationship and is a symptom of a much larger problem. As we prioritize the issues that will come out of the field we need an objective way to evaluate, list, and prioritize – one way would be to look at individual impacts. Some barriers are costly. It is time delays and others. With all these various issues how are we going to prioritize? This is just one example of a symptom that goes deep into the relationship. We need to define what it is and how we work on the relationship.

Ms. Palmer asked the Commission for their thoughts about how frequently they want to meet, and what seems like the 'right' pace. She offered that the Commission could, if it chose, to dovetail its meetings with national and regional meetings to reach out to groups.

Chair Sharp: The more time we invest in the Commission to develop a solid work plan early on, the more effective we will be. We need to make a decision to work as a full Commission to scope out work and budget or work as a subcommittee to develop the work plan. Between March and June we need to spend time working on the scope of work and budget.

Commissioner Anderson: We need to have a consultant on board to be able to work on some of the tasks identified. What is the process for hiring a consultant? What will we do? We need to have more information the next time we meet. We need to quickly develop some sort of letter to solicit information from those that can help us. At the June meeting we can talk about the specific feedback that we've gotten. Two things the Commission should figure out how to get that done and really get going fast.

Chair Sharp: Thoughts on the process to engage a consultant?

DFO Gillette: The Commission and the Department need to scope that piece out.

Tiffany Taylor (BIA): The most helpful would be to have a refined scope from the Commission regarding what the consultant would do in more detail. Top line ideas have been suggested here today and we can work through our contracting process and with the Institute to get a consultant. Define the scope – how big or how small do we want to start with?

DFO Gillette: The Department can define the process for hiring a consultant.

Commissioner Anderson: Could we, with the Department's help, pick out one subject matter area or one class of assets to give focus to the consultant?

Chair Sharp: Good thought or idea but I don't think that one person has the opportunity to look at all aspects.

DFO Gillette: Early success is important for the Commission. You don't have to focus on everything at once. If we could identify some of those that we could start on that would be good. I don't think that there is going to be a consultant that is the magic one. It would make sense to start piecing it out.

Commissioner Leeds: We have to begin defining this before we leave here tomorrow because the time given us is woefully inadequate to cover what we are suggesting.

Mike Black: You need to look at what is already evaluated, like the Fiduciary Trust Model (FTM) and other studies done. Rather than reinventing the wheel look at those things. You don't want to duplicate efforts or reinvent the wheel. It is going to take a lot of time and effort to determine what you want to do as a Commission.

Commissioner Anderson: It might be that the first thing is to collect everything that has been done so far. Doing a smaller chunk first helps us budget wise. If we do one big proposal it will be too large.

Chair Sharp: Having a really tightly defined scope of work will help. The more we invest at the front end will make it easier on the other side. The consultant scoping is the first matter of the work plan.

Audience Comments Regarding Draft Work Plan

- 1) Word of caution. As tribes, we have submitted volumes of information regarding bringing together tribal governments. The trouble with past studies is that the role of tribal governments is not included. When we go out and deal with trust assets we deal with a lot of issues. It is difficult to get to a single trust transaction that gets counted. Listening conferences are fine but we are just changing the dates on old documents. Trust is the trust and we are just renaming old problems. Government lawyers are just looking to reduce liabilities. We need to focus on elevating trust and honor. That is not what happens with these. This list of things that tribes are talking about never finds its way into documents – the life of Indian people. Those tribes operating three separate trust activities – OST, BIA, independent tribal systems - that have tremendous staff and expertise are left out of the conversation. It takes policy people to build honor and move relationship and create partnership.
- 2) For those of us involved in briefs on issues it breaks down into component parts. Asset protection. Issues related to asset ownership. Contractual component. Money management is one of the big criticisms - that there has been a push in the system to focus on the money management component of this - they are talking about the asset, the ownership. They are talking about the relationship. I can't see any way this gets covered in two years with any sophistication. Much stronger accolades if you work with tribes to get input on what's important. If the authorization doesn't match appropriation to match work – what can we really change within confines of what we have work with.
- 3) My students did a PowerPoint analyzing the process of consultation. What should happen when the government engages in consultation? Listening conferences are predominately useless. They don't get to the discussion regarding policy, it is just an exercise. You don't have the time to spend doing listening sessions. Time is too precious and should move into formal policy of consultation. I am glad to offer a more refined and focused process.

Chair Sharp: Consultation is another issue, [that] we would need to hear about from all interested parties. If we are looking at the entire universe of barriers we need everyone to help us define the scope of the universe. Maybe we can send a letter early on to gather input regarding the barriers of consultation.

DFO Gillette: The table does say listening sessions and this is just a draft. It is early in the process and I don't think I would be comfortable doing much of anything without stakeholders being part of what we do. Whatever we call it, I think that we are going to have to do this. It does take time. You get incredibly valuable information. Imagine if we didn't and the reception that would be given. From the federal standpoint we are absolutely committed to meaningful consultation that is time efficient.

Chair Sharp: The first order of business [for the Commission] is an evaluation of the process, a good scoping of the process, and a good scope of work is going to need our and Indian Country expertise. The logical next step is meaningful consultation – basic fact finding on the state of the trust relationship. We need to hear the historic reports to not be duplicative and not waste unnecessary time or resources. Planning session – decide as commission or subcommittee to work on that? We come together as a full commission to do that work or form a subcommittee to work on a budget, work plan, and scoping of an evaluator.

Commissioner Leeds: We can work together with the help of a facilitator.

Chair Sharp: As a preliminary matter what is the timeline to come back together by April to discuss the work plan? Somebody will take the lead on drafting something with the staff. In April we will hold a second session with the objective to finalize the work plan and scoping out the evaluator and that approach. A proposed budget will also be developed. It is easier to do a conference call.

DFO Gillette: We could allow a participant only mode to give the public an opportunity to participate.

Audience: We use WebEx with our area office and we can submit documents and you can work on working documents. I noticed there were two proposed meetings in Albuquerque and D.C. but would encourage the Commission to move around the country to allow all stakeholders an opportunity to address the Commission.

Commissioner Anderson: We have not finalized the locations; those were only recommendations. We will review that tomorrow.

Audience: This is about trust reform and is largely focused on implementation of trust duty. Does the first step need to be defining the terms of trust duty? The U.S. has established a solemn and longstanding relationship as trustee. There is currently a case in the Supreme Court regarding fiduciary trust. Has the U.S. enhanced the relationship or offered something less than what you would expect as a trustee from a bank? The first step involved is defining terms. What is the trust duty we are trying to implement?

Chair Sharp: I have given the same issue a great deal of thought. Some of the case law is detrimental to interests. We need to look at the definition of the trust relationship. In all of the administrative procedures is there uniformity of definition? Relationship means different things in different settings. We need to refine and clarify the relationship. The first step is clarification and a letter to the tribes asking about the definition.

Commissioner Leeds: Two different issues we are kicking around – scope of input/consultation and scope of consultant work. Will the letter be broad or specific to one item?

Commissioner Anderson: It should be both. We need to gather input and make it a meaningful consultation meeting later on.

Commissioner Zah: I would support the concept about having time devoted equally to both. I think sometimes people shortchange the community people, the Indian people. We're more educated now than we have ever been. We have a lot of young people who have gone through the schooling process. I don't want to be an ancient that carries out whatever the administration has in mind in terms of resolving this. Maybe we need to devote limited time to that. How do you have an input greater than what we now see to implement and monitor? If we are going to have listening sessions, Indian people are going to provide answers and I think they are looking for opportunities to provide information. We should seek them out. Someone said we are not going to have the time – we have got to make time, even if it means extending how long we are going to be here. There has to be some time devoted to asking questions regarding the role of the Secretary and the Indian tribes. You all know what happened with the Navajo and Peabody case. I was the tribal President when it happened. We got to clarify their role. Trust is a trust, doesn't matter who is in power. We really need to say that we got screwed because of the action of the Secretary and almost everyone here knows that. If you are the leader out in the field go to point that we couldn't see the Secretary. Not once did they want to talk to you because they already took sides. What about the next one? We need them to act the same way with Indian tribes.

Chair Sharp: Another thing we need to define is who is the target audience. It needs to be as comprehensive as possible. If it falls within the relationship and outside the trust reform as well. The tribes and organizations quickly come to mind and we need define that target audience. Once all that comes in do we have in-house capacity to do an analysis of those and to come prepared to our meeting in June? The June meeting sets us up to define the scope of work and period or recruiting and getting experts on board. If we are prepared in June to have the scope of work approved and back out to get them on board. We need time and dollars to fulfill this.

Audience: One of the problems seen is we are talking two different languages. We are talking social problems, education, healthcare, and transportation. The U.S. government looks at these issues in a very particular way. These types of things bear on people and they don't have the resources to come to Washington and they want a meaningful place to live where they are. They hear we are going to make improvements. We really do talk two different languages. I really respect what the Secretary, Deputy Secretary, President, and the DFO committed to. They are walking the talk but it has to be reduced to action to give relief to Indian people. It has got to create a job. We can't just be thinking of future steps, we have to get this reduced to action. We have to make good partners in the process.

Audience: I have a consultation question. If we start thinking about creating solutions it sets the tone for evaluation. You find the problem but connect to the path to solution and you get a better response. You need to identify problems to get to solutions.

Commissioner Leeds: We need clarification early on regarding the request for proposal process and the roles of the Commission vs. the Department.

DFO Gillette: There is a built in rule that the Commission has say but the final decision lies with the Department.

Saman Hussain: There will be clarification post-meeting to define roles.

Sarah Palmer: Would it be helpful to the Commissioners for the facilitation team to redraft the work plan to prepare for tomorrow? The Commission approved this.

Chair Sharp asked for additional comments and questions.

Audience: Tribes and tribal organizations – a lot of the land is owned by individuals and they need to be included in the list.

Chair Sharp: The list must be as broad as possible to include all stakeholders.

Audience: A suggestion for the work plan – look at using some software where each tribe has a visual into the process so they can provide feedback.

Historical Overview of Trust Reform Efforts

Michele Singer, Office of the Special Trustee for American Indians, and Mike Black, Bureau of Indian Affairs, provided a historical overview of trust reform efforts. The full presentation can be found on the Commission [website](#).

Michele Singer began the presentation. Ms. Singer noted that it is a privilege to present some of this information. She shared she is one of the few people remaining who has experience with trust reform. Ms. Singer and Mr. Black are starting to be some of the longest-term career staff in relation to trust reform. Ms. Singer stated that they are not recreating the wheel and she wanted to provide the Commissioners an overview of the last 10-15 years. The CD in the Commission materials contains the background documents related to trust reform. Ms. Singer noted that we are currently in the era of self-determination and self-governance and where we find some of our most important work now. In 1994, the Office of the Special Trustee for American Indians (OST) was created to address some of the problems raised at the time and to create reforms in the Department. The focus was on the High Level Implementation Plan (HLIP) with many different sub projects. It was in place for many years and there was renewed focus in 2001 when the Office of Historical Trust Accounting (OHTA) and Office of Indian Trust Transition (OITT) were created. This led to the Comprehensive Trust Management Plan (CTM). The Department and Tribal Leaders task force were created as part of these efforts but ended without consensus. The Task Force's last effort was at the Secretary's level to address this problem. It is nearly 10-years later and a great deal of work needs to take place. The Trust Asset and Accounting Management System (TAAMS) was created to meet the deficiency of accounts receivable at the time. There is more than a decade long history of reports available online. There is a strong focus in the OST on beneficiaries and communication. Trust reform from the government side continues to this day – it is the focus of OST work. One of the things underway at OST is an efficiency study – which will be made available to the Commission as a source of information. OST is looking for recommendations from outside regarding their efficiency. OST is looking for best practices to be as efficient as possible. Each bureau is reviewing government-to-government consultation to determine if there are other efforts that need to be undertaken based on bureau business practices.

Mike Black completed the presentation noting that reform efforts go way back. There have been lots of efforts and there is a lot of data that the Department needs to capture and take advantage of. What has been done with the data? A lot of the recommendations in the CTM have been implemented and there are some that have not yet been implemented. The BIA needs to take good hard look at the organization and how services are delivered. The BIA just completed an administrative assessment looking at the 2004 reorganization and how effective it was. The Bureau is now trying to determine if there are

changes that need to be made to the organization. Mr. Black suggested that the Commission integrate with current efforts in BIA.

Commission Questions Regarding Overview

Commissioner Zah: How come when we have all these good things there are so many problems out there? Or, were they even in place in the '80s? It needs to be that somebody else higher up is committed to these efforts. Next week I'll be out there and I'll have all these problems that the agency isn't addressing.

Mike Black: BIA has a long and often difficult history. A lot of what you see here is looking at a lot of the problems that we had. When looking at the problems and organization we tried to fix problems. There are certain areas we are trying to work on. It's always an ongoing and dynamic process.

Commissioner Zah: It's like a basketball coach. You have an offense you run and can teach. If you don't have the horses carrying out some of these things you are going to continue to have problems. You can look at the constitution in the same way. If you have people that aren't following policies then you have larger problems. Who's serving? Do they have experience out in the community?

Mike Black: I have to hear from people out in the field. I come from the field – most of my career was there. I hope I have brought that perspective. We need to look at internal controls. We can put all the great things in place but if they are not being executed they don't serve a purpose.

Commissioner Anderson: Allotments in Alaska – land consolidation doesn't apply there?

Mike Black: We can provide you the information – there are specific laws regarding trust lands in Alaska.

Chair Sharp: One thing that would be helpful for me, it seems that since 1994 we have known that the situation was so egregious that reform was undertaken. It would be helpful to understand the full spectrum of responsibilities. What were the internal efforts to ensure those issues identified and how did the department respond? Once Congress decided OST was responsible what did OST generate to respond? The internal would be important to understand. What are some of the gaps? Where has an effort of oversight or reforms not been undertaken? The on the groundwork is important to understand. Second part, what have been the independent evaluations of Department successes and failures? Congressional oversight hearings? We need input from Indian Country to try to help garner movement. We need to try to review and assess some of the instructions coming out of Indian Country. There's a whole universe of efforts underway to identify issues. To approach this in an honest and deliberative way we have to look at all venues and opportunities. We need to think of the whole and how we might piece some of this down and how we identify barriers.

Michele Singer: Some of this is covered a bit more tomorrow. This was structured to be more of the documents and history of the last 15 years. In the morning we will begin trying to answer some of these questions. Ongoing we will provide requested information.

Mike Black: We may be able to hit upon some tomorrow morning. We can spend two days going over the things you are talking about – there is so much information out there. Some of the offices created were to minimize interferences and conflicts of interest.

Commissioner Anderson: I see you have given us this disk with a lot of these reports, transcripts, etc. Is this every oversight hearing?

Michele Singer: No, we were trying to get the highlights to start and additional documents are to be provided.

Commissioner Anderson: This index would be useful to post on the website so that the public can access it.

Audience Questions Regarding Overview

Audience: You should refer to the American Indian Law of Modernization Act. The scope of work for the consultant – will there be effort made to identify those things susceptible to administrative action, legislative action, or other? It would help to have some identification of which area requires which type of fix.

Mike Black: We have been working on this in this Administration.

Audience: Glad that you mentioned that tribes are involved in this [reform efforts]. I almost felt like we needed to do a parallel overview of the tribal role. In Cobell there are no records to retrieve. OST worked hard on management. Going back to 2002, every tribe opposed what was happening and yet reorganization was shoved down their throat. In 2004, the Great Plains, Rockies, and Northwest tribes came together to get funding for an effort for one year but then that fell to the wayside. Some of the elders have hard feelings to this day. There is a reason why they couldn't come to an agreement and they refused to acquiesce to what the plan was. I encourage you to get this tribal input. There is a reason why the BIA mission is to protect and manage; this is not in the OST mission, the only role of the OST is to manage. In the Great Plains so much is invested because of the largest land base. We are putting a lot of future and hope in you. I think this administration has been very helpful.

Audience: if you look at self-governance and self-determination it has been wide effecting. In 1998, an AZ Republic article stated that 10% of every dollar appropriated was getting to Indian Country. I challenge you to look at OST and how much money is contracted to tribes. Look at trust records – there are a couple hundred million records to keep. If we want to manage trust assets we need to be where the trust assets are. Look at OST to look at improvement of records at trust programs. We could not get OST to understand that life in Indian Country is not in offices but where the people are. Look at OST process now for administrative surveys. We can buy services from the BLM to get survey certification. This has turned Indian Country completely backwards. Today what used to be a one-stop shop takes five different federal offices that don't care about bringing work, they care about the money from OST. We were talking about this long before there was OST. Why did we have to create an entire agency? OST success record is pulling people from BIA and now they are going back to BIA. They are focused on the wrong problem in OST and still have to deal with the underlying problem. If we don't have an appraiser that sits in an office in Sacramento that is accessible, what good is it? Ethics – I can understand that what happened with past acts, I can understand why BIA was fragmented in the process. I asked the question how does OST come to the point where their head people have ethics violations? Once every single month for eighty years. How does that happen? Absolute power corrupts. Step back, merge, and get over the disregard of tribal governments. It can't hurt or help with the cave in Kansas. Get this out to Indian Country where Indian people have problems. Those are not even in this plan. I appreciate you looking at this because it's time Indian people got relief.

Commissioner Zah: The problem then is that Indian people who have become the worst ones punishing their own people. Agree there has to be some kind of mechanism in place to weed out these people. The people carrying out the law either don't believe or use portions against Indian people.

Chair Sharp: A broken arrow will never fly straight. We need to take up the tribal perspective. Sounds like we will have more enhanced discussion tomorrow.

Use of Independent Facilitator

Sarah Palmer, USIECR, and Regina Gilbert, Indian Affairs Office of Regulatory Affairs and Collaborative Action (RACA), discussed the use of an independent, third party facilitator. Ms. Gilbert shared her experiences on using an independent neutral in work on the No Child Left Behind (NCLB) FACA committee. The USIECR is part of the Udall Foundation an independent federal agency that provides collaboration, facilitation and mediation services. Ms. Gilbert shared that USIECR offers an array of services that are not only on environmental issues.

Ms. Palmer shared that USIECR works on a number of projects and types of services. USIECR is an impartial agency that doesn't have a stake in outcomes of the substantive issues and rather it assists people by designing processes that work toward collaboration. USIECR assists in facilitated negotiations, mediations, and consensus building processes. Ms. Palmer shared the approaches to providing third party support for the Commission and described how the USIECR can assist in each option.

Ms. Gilbert provided an overview of the use of a third party neutral in the NCLB FACA committee. The Committee created a convening report to assess the conditions in schools and determine the funding and needs of the schools. The facilitator helped the Committee to focus and keep on track for achieving its goals. The facilitator helped identify needs for subcommittees and worked with each group during the meetings. The facilitator did the legwork and with the management of the data. They also assisted with the interpretation of the data and ensuring everyone is on the same page. The final report with recommendations will go to the Department Secretary to assist with policymaking.

Commissioner Anderson: Do we have to get a third party facilitator or can we use USIECR?

Sarah Palmer: We do have some staffing challenges but it is up to you regarding what best meets your needs.

Commissioner Anderson: I'm thinking of this group in particular. You know what the charge is and I know your busy and there is some other support available. I would like to recommend USIECR fulfill the role of third-party neutral. The Commission supported this suggestion.

DFO Gillette: From the federal perspective the USIECR is great and their role is to remind the federal folks of the role of the commission. They don't have a stake in the outcome and they will be honest and help set expectations. It has been extremely helpful in that sense. They are very thorough and deliberate in how they take their role and in getting to success. My experience has been very good.

Commission Meeting Schedule and Locations

The Commission then reviewed the meeting schedule and locations.

Chair Sharp stated that they heard this morning that the Commission should be looking at getting out in Indian Country. Currently there are four proposed dates and locations for Commission meetings in 2012. Some Commissioners have conflicts with either the dates and/or the locations and the locations should be more geographically balanced to maximize attendance by tribes, individual Indians, and tribal

organizations. The Commission identified the following schedule and locations pending confirmation with Commissioner Hall.

June 11 and 12 in Rapid City with possible session in conjunction with NCAI the week prior
Sept 13 and 14 in Albuquerque
December 6 and 7 in Seattle

Ms. Palmer reviewed Commission action items for the day. The full list can be accessed on the Commission [website](#).

Additional Comments from the Audience

Audience: Consider a group to discuss energy development in Alaska.

Audience: I have been involved in other FACA processes and appreciate that you allow participation as freely as you have been.

Chair Sharp: To truly make this a success we need the audience feedback. Anytime there is room to engage the public and the audience, we will work to gather feedback.

Commissioner Anderson: Thank you for chairing you have done a great job. Getting comments as we go through topics has been helpful.

The meeting was adjourned at 4:45pm.

Friday, March 2, 2012

Invocation

Commissioner Dr. Peterson Zah of the Navajo Nation provided the invocation.

Review of Day's Agenda

Chair Sharp welcomed everyone to the second day of the inaugural meeting of the National Indian Trust Administration and Reform Commission. Sarah Palmer, facilitator from USIECR reviewed the agenda for the day. The agenda may be viewed on the Commission [website](#).

Ongoing BIA Trust Reform Work

Bryan Rice, Deputy Bureau Director for Trust Services and Mike Black, Director Bureau of Indian Affairs (BIA), presented the ongoing BIA trust reform work. The full presentation can be found on the Commission [website](#).

Bryan Rice began the presentation. He noted that as reviewed yesterday, there have been several reform efforts undertaken. These include 'As-Is', 'To-Be', 'Comprehensive Trust Management Plan', and the 'Fiduciary Trust Model'. When reviewing the program areas BIA looks at these collectively because they are managing land and resources. This includes BIA and other agencies and bureaus – it is a collective management responsibility. There are currently 55 million acres under trust management; just over a million acres are restricted deed allotments among 18,000 individuals. BIA has 4,800 full-time staff and 775 staff are in the Office of the Special Trustee for American Indians (OST). The management of trust services is quite complex and OST has fiduciary responsibilities across all management activities. Mike Black indicated that BIA will provide Commissioners information on the number of 638 contracts and self-governance agreements related to land management activities.

Mr. Rice indicated that a big area of focus in forestry revolves around the forest management. The National Indian Forest Resource Management Act (NIFRMA) allows tribal forestry services to manage different and separate from the U.S. Forest Service and states. The Natural Resource Damage and Assessment Restoration (NRDAR) Program has non-appropriated funds that help manage the restoration of natural resources damaged as a result of oil spills or hazardous substance releases into the environment. BIA has heavy involvement in commissions that involve wildlife. BIA works directly with other federal agencies and has a very interagency focus. There is a major effort going on with the Department of Agriculture to generate an MOU to see which programs intersect to provide tribes access to take advantage of NRCS programs. BIA also has a fairly good relationship with the Bureau of Reclamation (BOR). BOR has technical experts and engineers to assist with the oversight of dam safety. BIA is working to bring some of these services in-house in order to better manage costs.

Mr. Rice reported that the Office of Probate is the program responsible for preparation of probate cases for submission to responsible decision makers for determination of legal heirs or devisees and subsequent distribution of the estates. Approximately 7,000 probate cases a year are adjudicated; there has been a high rate in the last three years – 95% of all cases have been probate. The Probate Office,

Land Titles and Records Office (LTRO), and Real Estate are all intimately involved and work together. Land status and title of land are all the areas that Real Estate Services covers. Fee-into-trust, trust-into-fee, federal-into-trust, reservation proclamations, leasing, rights-of-way are different areas that are hot topics for the Real Estate Services. Mr. Rice reviewed graphs indicating trust income over the last few years. The oil and gas spike through Trust Fund Accounting System (TFAS), equates with the 2011 Midwest oil rush; the Office of Natural Resources Revenue (ONRR) graph indicates the royalties of oil and gas. Leasing regulation updates and real estate updates are in Bureau policies and procedures and handbooks.

Climate change, leasing regulations, fee-to-trust, the Indian Affairs Collaboration Tool (SharePoint), and the BIA Streamlining Plan are the most active initiatives at this time. BIA is working with the Landscape Conservation Cooperatives (LCCs) to interject the importance of Traditional Ecological Knowledge (TEK) into the larger picture of climate change. Climate change and TEK can get lost because in the larger government framework. US Geological Survey (USGS) has many scientists and all the agencies have different services related to climate change. BIA is the most socially focused agency and is working to ensure this perspective is being heard in the climate change conversation. The idea behind LCCs is to coordinate studies, science, and activities on the ground and encourage agency collaboration and coordination of information surrounding climate change. There is a coordinator in DC and regional coordinators across the country.

The updated leasing regulations are currently proposed rules and are not yet final. This is an effort led by the Assistant Secretary's office to look at the 50 year old law and try to look at the new developments in energy and provide opportunity for tribes to manage their own leases. The agency is looking at things that are in place and that the things that created hindrances; they are taking a proactive approach to improvement.

Mr. Black commented that he is proud of the Fee-to-Trust staff and everything they have done to make this happen. Mr. Black shared that in 2010 he and all of the BIA Regional Directors brought this issued to the Secretary's office and they looked at processes, handbooks, and standardizing processes and have come so far in the last two years. In 2010, 315 lease documents were processed and in 2011, 319 were processed. In the previous three years less than 200 were processed. The increase is a credit to Regional Directors and tribes. When steps are eliminated to make processes easier, more work is done. The question was asked if most of the leases were on the reservation. Mr. Black responded that, "Yes, there are still some issues with off-reservation. Certain parts of the country where there are state and local objections adds two years to the process. We are working to build relationships to other parties to help educate them and they are not quite so hesitant to work with us." Mr. Black was then asked, "If county acquiescence is received what is the time line?" Mr. Black responded that, "I would like to say one year because of all the environmental work required."

Mr. Rice shared that the IT transformation is happening in the Department and everyone will have access to information for better coordination, tracking, etc. A question was asked if the IT transformation was internal to the Department. Mr. Black responded that it is internal but they are working on a process to get to real time data that would allow the tribes to enter information.

Mr. Rice continued discussing the technological improvements, noting that the ability of people to rapidly assess and take on new tools is impressive. The BIA pays for all tribal and BIA bureau licenses for ArcGIS via an ESRI enterprise contract. Lync is being used by OST so that they can use voice-over-Internet Protocol (VIP) to run communications through the web. All BIA programs are using these

solutions. Forestry programs have been online for quite some time – utilizing the technology for handbooks, maps, and to make sound management decisions.

Mike Black completed the presentation noting that this presentation touched on the overall organization – there are three main things the organization is focusing on, Justice Services, Indian Services, and Trust Services. BIA is making a concerted effort to meet with staff across the country. The BIA doesn't necessarily have a great history and they are addressing that. Mr. Black reflected that he has great staff and some of the most dedicated staff; they are carrying out one of the best missions an agency could have. BIA is working for our [Native] communities. BIA has a lot of great expertise that the Commission can take advantage of. Mr. Black continued that BIA will offer up anyone that can be of assistance to the Commission.

Commissioner Questions Regarding BIA Trust Reform Efforts

Commissioner Zah: Anything in medicine?

DFO Gillette: One of the few places in the country is in Alaska.

Commissioner Zah: What I am getting at is they now have technologies for older people to register vitals with the hospital and their doctors. This helps those in remote areas communicate with doctors and if things get high they get texts asking them to come in. It's a neat idea that has other potential applications. In the Grand Canyon they send a satellite up to connect to wireless signal and communicate. I have a friend who puts GIS on his cows and in the morning he can pull it up on his computer to see where they are. If some are too far out he gets on his horse to round them up.

Commissioner Leeds: Is the SharePoint on a DOI server? Is any of that information available if you are not an employee?

Bryan Rice: Some units have external SharePoint but most is internal access only.

Commissioner Anderson: What happened to the DOI directory? I can't find this online any longer.

DFO Gillette: There is a lot of process people have to go through to create new web pages and there is an overall department effort underway to work on this.

Bryan Rice: We are looking at ways to meet the requirement of streamlining and meeting the budgetary reduction requirement of \$15 million. This is tied to consultations to be held in April and May and this plan will be part of the consultations.

DFO Gillette: We want to hold consultations with tribes to see how this will impact tribes.

Mike Black: We hope the [consultation] letter will be out soon – by next Friday [March 9, 2012]. We are trying to get information and tribal feedback on streamlining.

Commissioner Anderson: The Commission would like all the comments from the tribes from these consultations.

DFO Gillette: This [streamlining requirement] directly impacts BIA and the compact and contract functions.

Audience Questions Regarding BIA Trust Reform Efforts

Audience: Tribes are struggling with technology and technology budgets. Are there any studies regarding a backup plan for the tribes that don't have technology access?

Bryan Rice: The irrigation program is a good example. The data is input at a tribal office. The ideal way to update the platform was to put that service in the mobile environment but we are finding in lots of areas where irrigation programs are, the technology is not available.

Audience: What you said about BIA staff goes to tribal staff as well. We are spending \$3.5 million or more to fix water problems. BIA has been a dumping ground with other agencies. Self-determination has brought more funding to trust than any other law. Tribes can cut across the board to get funding. We found that for every \$1 of BIA funding we receive the tribe is spending \$3 by getting funding from other sources. Is the priority to look at just BIA or look at full trust management, including the tribes? Hope to deliver a better trust system. Is this about managing BIA system? Where do the tribes fit in this? Tribes are willing to help out and partner.

Mike Black: I was remiss in not saying that. Some of the tribes are light years ahead of us. There has been lots of discussion recently that we need to take better advantage of the technology out there. I look at this not as a BIA function but a trust function. It is compacted and contracted – we have to look at the whole program, not just how BIA does it. Keep in mind tribes sometimes have flexibility we don't and this can restrict us from doing some things to further operations of the trust system.

Audience: We have had a tremendous backlog of lease issues. Sat down with the Bureau in 1990 to work to resolve this.

Audience: Back on the leasing, what is the bottom line in regards to clarification?

DFO Gillette: We can get a copy of the leasing regulations in a proposed rule format that is not final. There were four points but there are several other changes not included. We are not doing mineral, agriculture, or surface leasing. Another section is housing, and wind and solar energy. We wanted to make sure that components were stand-alone. It is in draft and we hope for a final by June.

Audience: I want to see this and it should go to regional directors.

DFO Gillette: It's not effective right now; it is a proposed regulation.

Audience: I think one of the challenges for the group is that there are tribes and beneficiaries that are light years behind. We have got to be able to deal with the people who don't have access. Keep in mind tribal groups that don't have what others do. What should be electronic, what should be on paper? Rocky Mountains, Great Plains, and Navajo are three of the largest and also have some technology access issues.

The Office of the Special Trustee On-going Efforts with Trust Reform

Michele Singer, Office of the Special Trustee for American Indians, noted that yesterday she and Mike Black talked organizationally about how OST and BIA worked together. Ms. Singer shared she is currently 10 weeks into her new role as Acting Principal Deputy Special Trustee. She believes the collaboration between BIA and OST, how they work together, and the way they detail people, is seamless. The need and knowledge for land use regulations came from various offices. Ms. Singer shared that she and Mike Black did the presentation together because they view themselves as a team and work together on this trust. With the Secretary's remarks he indicated we are all on his team and the mission for all of us is the same. A task of the Commission and the Department is to review the Trust Reform Act (Act) and the sunset provision in it. There is a gray area regarding the strategic plan and guiding documents that impact the Act. OST has taken on the operational functions in relation to the Act.

Ms. Singer stated it is important to note that OST manages financial trust assets. An incredible amount of work is done by OST and they are looking to increase the number of electronic disbursements. Electronic disbursements is an area for improvement but OST is not looking to make electronic payments required. There is no way OST could serve beneficiaries and put forth some of the same mandates that other agencies do in regards to electronic payments. If the disbursement numbers start to decline, OST can see that change, look into why and track the issue down. Ms. Singer shared that OST has settlements coming in and that money stays invested until OST receives instructions on how to utilize it.

The effort by the Office of Trust Review and Audit is to work collaboratively to identify problems to bring resources needed to resolve issues. There has been a major effort to locate account holders classified as whereabouts unknown. OST works hard to deliver quality service and provided an 89% first line resolution rate for beneficiaries that contact OST. The office has made improvements to statements, including the Explanation of Payment (EOP) report and are moving to implement efforts that are government-wide. Ms. Singer stated that for OST, their 'North Star' is to fulfill fiduciary responsibility - whether out in an agency office or in a call center. OST wants to provide better information. The statute requires OST to have an Advisory Board with nine members. Overtime they have provided a number of suggestions and recommendations and that could be a valuable source of information for the Commission. The summary of Advisory Board meetings will be provided to the Commission reference.

Commissioner Questions Regarding the OST Trust Reform

Commissioner Anderson: Who is the primary counsel in the Solicitor's Office?

Michele Singer: We work with a lot of attorneys.

Commissioner Anderson: The Commission might want to interview one or two of the lawyers about these issues and so on. This would be an important thing to do.

Michele Singer: We can get you contact names and people we work with most closely.

Commissioner Anderson: There are 384,000 IIM accounts. Are there any projections of growth? What was the number five years ago vs. today?

Michele Singer: It has grown some but in the future it is tough to tell.

Commissioner Zah: Do you have a breakdown of the number by tribes?

Michele Singer: We can get that breakdown for you.

Commissioner Leeds: What is the scope of the examinations?

Michele Singer: To look at the lease. Does it have the right information? To look at snapshots, records keeping, and to provide an independent records examination. They are looking at program or Department- specific reviews. These reports are shared with annual auditors. We want to solve the problem and help.

Chair Sharp: This is an area I have interest in. This is the main function and charge of the Commission. I would be very interested to know that we have the singular issues and audits but have there been annual summaries? What are the criteria for audits? Are they issue specific? A good, tight auditing function would have laid out how this works and how this particular area operates.

Michele Singer: There is an ongoing risk management program. Each manager is responsible for assessing risk on an annual basis. Each office has an annual work plan. On a three-year cycle we evaluate all departments and programs and contracts and compacts. We have not regularly met this goal due to budget restrictions. We have been responsive if problems are reported. An independent auditor

completes an annual audit and they travel nationwide looking at all programs. They [the independent auditors] issue a trust report every year. These are Indian Trust examinations, not audits. There are different, specific things we look at. The general audit misses things because of program specific matters. The specific Indian trust examinations are for trust responsibility as well as strict accounting standards. This is a better approach.

Chair Sharp: What is the level of staff consistency? Is this an area of high turnover? Are there many long-term employees?

Michele Singer: I know a bit because of my past experience. There are no staffing trends; I know there is some consistency and the staff has grown. We endeavor to bring in people familiar with Indian Country and Indian programs. We also look for people with audit skills. They need to understand our trust responsibility; we want people who understand what we do. There has been a turnover of leadership that could have caused issues – at least four directors since the reorganization in 2003/2004. There could be a slight change in focus while getting up-to-speed with the new director.

DFO Gillette: Is there a summary of some of the things from last year?

Michele Singer: We don't have a summary of all the reports. A report is done for most of the examinations. There is not a summary of issues found.

Chair Sharp: Given the task we have and within OST during this period, we need a comprehensive look at all the issues related to trust responsibility. There is no really sort of overall look as to why this is not working. How effective has OST been? If commitment is weak because of staffing have reports been given to decision makers to inform appropriate distribution of resources? What is the function? Weaknesses? Barriers, etc.? How do we identify the true barriers (funding, policies, legislation)? It would be helpful to get that look and could be a part of the evaluator's scope.

Michele Singer: We can start by pulling all the reports and seeing what type of overall looks and reviews there have been. Some of the specific things identified may not necessarily be part of the evaluations. Major projects were focused on because of known issues and not necessarily because of the audit reports.

Commissioner Leeds: Have there been periodic reviews of strategic plans?

Michele Singer: There are annual reports on progress to Congress and Office of Management and Budget (OMB). NOTE: The 2013 budget request slated for elimination for Deputy Special Trustee – Trust Accountability. The reform projects were in this office. The reforms were complete and staff are in place to move these initiatives through. We were looking at organizational changes prior to my coming on board and we are working through all of these right now. The budget proposes a large increase in the audit area in FY13. The Office of External Affairs (OEA) negotiates with the two tribes that currently compact the IIM program. The Office of Historical Trust Accounting was created in 2001 and was transferred to the OST in 2007. They have also been responsible for cleaning up historical special deposit accounts and responsible for distribution of monies in these accounts.

Commissioner Anderson: How do the two tribes managing IIM accounts do, any reports?

Commissioner Leeds: What sort of oversight and examinations did these tribes take on as well?

Michele Singer: More than 70% of accounts have principle of less than \$500 in special deposit accounts.

Commissioner Zah: This is so huge and is mind-boggling information. There are people out there who think that because of the settlement the problem is over with, just have to pay off the settlement. Based on what you have given us where is all of this supposed to go? Just reading Allan Parker's letter to the

chair – is there anything being done so that the tribes are brought along? So some things can be transferred and they take over their own programs. Your response?

Michele Singer: We do regular outreach with tribes regarding investments and there have been huge increases in financial management training. We definitely have a goal and statutory mandate to do more around education and capacity development. We want to work ourselves out of jobs. This is definitely an area where there could be improvement. Even with the settlement of \$4 billion, that is all work that has to continue – whether by tribes or the federal government.

Audience Questions Regarding OST Trust Reform Efforts

Audience: Contracts and compacts and how the appraisal has gone historically - has there been any review?

Michele Singer: We have records on reviews and issues that have been addressed.

Commissioner Anderson: It would be good to get summary of this sort of stuff.

Audience: Will the new Advisory Board be appointed?

Michele Singer: We will go through the process of appointing new board members. I wanted to get through the initial meeting of the Trust Commission and then begin work of selecting new members.

Audience: A clarification of the 29 contracts that were in existence before OST. The real problem with OST is that the 1994 Act that created the office stated it was supposed to be an oversight function and it has become an administrative process. OST has become the administrator of trust programs and the oversight function is unknown. Violations occurred for eight years and were left unchecked. We see so many conflicts between tribal trust today and other non-BIA programs, a lot on water.

Audience: Is the fiduciary system a proprietary system?

Michele Singer: It is a BIA modified off-the-shelf system.

Audience: How many tribes have withdrawn funds from government oversight?

Michele Singer: I don't have the number. It is tracked. Some have done this and are asking to bring it back. Not as high a number as I would have expected.

OST Staff Response: About nine.

Discussion of how the Commission will engage with Indian Country

Sarah Palmer, USIECR presented a draft proposal regarding engaging Indian Country. The ideas came from individual discussions with the Commissioners.

- Develop a letter describing the purpose of Commission and invite written comments and testimony
- Use own (Commissioner) contacts to reach out to individual organizations, from allottees, from treaty tribes working on trust management issues to:
 - Elicit concrete suggestions for change
 - Help garner support for ideas and options that the Commission develops
- Make presentations at national and regional tribal organization meetings such as NCAI, ATNI, USET, GPTCA, ITMA, ILWG, and others
- Identify who coordinated Cobell outreach- have that entity or person(s) assist

- Have each Commissioner host a Commission meeting to ensure geographic diversity or dovetail Commission meetings with national and/or regional conferences
- Have each Commissioner and the DFO host a listening session in their geographic location. Each session would use the same set of questions and session transcripts shared with other Commissioners
- Create interactive website where:
 - People can post documents to the Commissioners to review and utilize
 - Includes secure workspace for Commissioners to work on deliberative drafts.
- Host informational webinars where participants can ask Commissioner questions
- PSA announcements and/or interviews on syndicated Native American radio shows and Native radio stations in rural areas (e.g., Navajo Nation, Great Plains region etc.)
- Factor in outreach to urban Indians
- Commissioners divide up and have conversations with interested parties
- Let people know that commissioners are available to meet with interested groups
- Establish a communication plan include presence at:
 - In person meetings,
 - Regional national meetings,
 - Link communication plan to deliverables in work plan, to ensure communications are wide
 - Utilize social media, website, radio, all forms
 - Be available upon request
 - Establish an email listserv (put a link on website to join listserv?)
- Compare subset pleading w DOJ responses re perspective of definition of trust (legal perspective)
- Conversations with members of tribes

Some possible priority topics for the Commission consideration might include:

- Look at original trust concept to consider improvements of the relationship, and reaffirmed. (Chair Sharp added additional points related to the trust relationship)
 - Hear from tribes, Indian Country about original trust relationship and how to define the trust
 - Expectations that relationship is two-ways, recognize self-determination of tribes
 - Linkage to treaties
- Possible definition of trust responsibility to clarify: what is being reformed, reaffirmed, considering mechanisms of trust
- Consider making this an early, statement from Commission, possible that lays out focus of work, entry points to reach out to Indian Country, interim report and strengthen Communication to Secretary

Questions from the Commission Regarding Engagement with Indian Country

Chair Sharp: Do the Commissioners have any ideas on how to directly engage tribal communities?

Commissioner Leeds: One or two of the commissioners could do more on-site interviews or fact finding sessions, particularly with tribes that are doing their own self-determination work. We would need to request a specific travel budget for this.

Commissioner Anderson: We can use our own contacts but let it be known that we are available. I would be open to going to different places if someone called and asked to meet with me on issues in particular places.

Commissioner Zah: I think those are almost a necessity for the Commissioners. If we want to communicate with constituents in local groups, we have to make a point to go to some of the meetings and let them know what is in the works. Undoubtedly, there will be a lot of questions and we need to be quick with answers. We have experience and can be frank. In some cases we have to change attitudes.

Chair Sharp: We need an overall communication plan that includes many mediums (in person, organization meetings – part of regular dialog) and tie the timing to some of the deliverables in the work plan. We are not likely to have one evaluator; when we get to that point we should get communications out and tied to deliverables in the work plan. We need to be diligent in real time decisions that need to be communicated widely and effectively and looking at the distribution medium. There are all kinds of venues. We need to be explicit in the types of media and our target audience.

Commissioner Leeds: We need to make sure one of us is available at conferences where there will be a good draw.

Questions from the Audience Regarding Engagement in Indian Country

Audience: You are talking about engaging tribal members and individuals but there is no common definition of what trust responsibility is. If you are going to have separate meetings, what are you reforming? What is the definition of what this work is about? Is it the eroded form of contract management trust or treaty trust? There are different understandings of what that is.

Chair Sharp: We talked about that somewhat yesterday. In the Commission our responsibility is to recognize that fact and as we put together the work plan and communication plan.

Audience: What already exists as trust status? What is being reformed?

Commissioner Leeds: The word reform is in the title of the Commission. To me it's as broad as saying that we need to define what the relationship should look like. We need to engage in meaningful dialogue and if this is going to be successful in the future than this has to be defined. We should call the whole mechanism into question.

Audience: You need a single source to work from.

Audience: I appreciate the broad approach. Allottees would like to share with you their understanding of trust. Everyone would like to share with you. Notices should go to tribal level and offices and radio stations to get the word out to individuals. Half of all the oil and gas leases managed by the Bureau are in Oklahoma.

Chair Sharp: One of the core missions of the reform aspect we are looking at is reform of the original trust. We need to look at the original language. I think you will hear some recommendations when we discuss subcommittees. How do we get back to the reaffirmation of the original relationship?

Audience: This isn't the first time we have had an effort like this in Indian Country. This is not just about how it is defined. Each of you have been appointed because of the status you hold and the work you have done. With locations of the meeting you have left out four areas. I don't know when you are going to cover Indian Country. The Commission can't be at all places at all times. Don't know if you can meet in

every of the 12 regions. It is important to not get burned out. This is a reality check. This room is a small sample of the expertise and built up frustration that will be present at every one of the sessions. You need to set yourself up to something you can deliver on.

Audience: Yesterday there was some discussion of whether the report would come at the end or if there would be interim reports. The suggestion of reviewing the underlying trust duty should take the form of an early report. There is litigation underway that may change trust.

Chair Sharp: That is an excellent goal to strive for.

Commissioner Anderson: What we might want to do is get something down with an understanding it is in draft form. We don't want people to react thinking we made a bad judgment because of something we didn't know. We will be relying on you guys for constructive guidance.

Commissioner Zah: When I was asked to serve on this committee there is a lot of things that goes through a person's mind. There is a management side of what we are charged with. The most important thing for me is probably in some ways defined in what that trust is so that the people out there understand what it means. The word trust, the courts interpret that in terms of what they think it means. The word trust has evolved into something else during a long period of time. Trust is something that came from the federal government, the Europeans in many ways saying in exchange for the land we will take care of you in this way. The whole concept came under trust. We have lost site of what that meant, not to us – to the courts, lawyers, the cases. Now no one really knows what that means. We have gotten to a point that people can use in whatever way they want. What did you understand trust to mean? One thing we will do as a commission is reaffirmation of what we understood back then. This is something the Commission should support so that everyone understands what it means. If we can do that, we can do a lot. That is coming from the guy who is not a lawyer and never claimed to be. It's just the way I understand things. We should ask the Indian people what they think it means. We will end up having to reaffirm what they understood.

Audience: I second some of those comments. We did a survey with 4,000 Indian respondents. About 96% said the most important thing for Indian people is to define trust going forward. We have been working with a couple of tribes talking about redefining trust in a way that's probably not in the bounds of most people's thinking right now. We intend to redefine the trust in substantial ways. I think you'll find in Indian country the trust is a two-way street and they want to be there in a big way.

Audience: I encountered the argument that duties of the U.S. are only that in statute and regulation, where and if common law standard comes into play. We probably need to have an adequate statutory foundation.

Chair Sharp: We will look at all recommendations for legislative proposals for reform. There are a number of legislative proposals including a basic definition.

Audience: Make sure you get ILWG on the list.

DFO Gillette: Something we can put together pretty quickly is a list of people who should be on the distribution list. Some of the direction of that list is to ask the organizations to distribute the information on to their listservs. One shortcoming of what the federal officials assume is that once we email it out that it will multiply and grow. Sometimes it hits the end with only the recipient you send it to. If there are other people that you think should be added to the list forward those. We don't like to clutter people's email boxes with distribution lists.

Chair Sharp: There are many levels to communicate with regarding our work and specific questions we need to hear from stakeholders. In certain subject areas we will really need to define and have precise questions to get the feedback. The more we invest we will get lots of good information back.

Audience: Part of this exercise needs to be what happened? The tribal pleadings define trust for the tribes. The U.S. responded by saying no. It is the in briefs of the U.S. that came out and said the role of trust in the common law should not be applied in Indian Country. It is not necessary to define what Indian Country considers as trust. We are dealing with a government that has refused to take the tribe's definition. I would like to encourage the Commission to compare the pleading with the answer of the trust definition. Therein lies the problem. It is important to capture the way Indian people view trust but we need a result.

Audience: I think that you are talking to different audiences. A tribal lawyer is one thing. If you are talking to Indians under self-determination status they will have a different perspective. It can't be restricted to a lawyer's understanding of it. How do we get there once we have a common understanding?

Audience: This is a paradigm shift. Push of information out to the tribes. In terms of self-determination it isn't a pull. Individuals can pull what they want out of the trust. How do you set it up so information can be accessed no matter the level?

Audience: Make recommendations to the legislature. We make the rules and the Executive executes the rules.

Audience: When I go home, what's always hammered home is our treaties. Our elders always say that trust in our treaties is law enforcement, education, health care, and all these things. The way the government has been, it has taken those out of the trust. For us, trust is broader than the land because it's in the treaties. The treaties need to be part of this because that's where we come from – treaties signed created government-to-government. Our people will tell you this and that's the expectation they have. Today it's being diluted and this disturbs us greatly because we will become a minority.

Commissioner Zah: For all those points we just heard - it makes this last one very important. Consider making an early sentiment that says what we think the word trust really means to us. We have two years. During that period there will be some cases where an Indian tribe has filed suit against the federal government. Those cases will be tried, or mediated where those cases are reprimanded back to courts. When the federal government gets involved in those kinds of issues they have to come to an agreement. They might put into the agreement what they think the federal government means. Have Indian tribes agreed to that because the agreement is signed between two parties? It will happen during the time we are in session. It is important to state sentiment as to what our position may be. I don't think they should cause the Indian tribes who are agreeing to say something sort of what we think they should be saying. The Commission has to give a nudge to the people who have been giving us all these reports. I don't know what the magnitude of the cases of tribes against the federal government will be and would like to get a sense of the number of cases that may be finished during the two year period. We should tell the government what we think.

Chair Sharp: I have gone through the Charter and Secretarial Order. Isn't there an opportunity to strengthen the communication to the Secretary regarding what the order of interim reports means? Maybe a preliminary report that defines our charge and the entire universe. As a Commission we owe it

to tribal communities to seize this opportunity. We should break out each of the charges and identify points of entry where we will need advice and recommendations from Indian Country. We should put in a very succinct set of findings. We can strengthen the link to the Secretary and do some fact-finding on issues that we needed to respond to yesterday. This will strengthen our final product.

Audience: The disenfranchised urban Indian is often forgotten. This has to be always on everyone's mind when making this serious decision. I'm a treaty person so my basic understanding is that we have our lands to protect us from encroachment on our lands – resources, space, etc. How does this play out in the era of self-determination? We gave up this land for protection from encroachment. We are being encroached upon by corporations, organizations, etc. Understanding those that are still where we are in the beginning because we weren't protected. This is simply the trust responsibility.

Public Comment Period

Daniel Jordan, Hoopa Valley Tribe. The first issue is we are not going backwards in self-governance and self-determination. About 65% of BIA is of retirement age. With the downsizing of the federal government, more activities by necessity go to the tribes. We are running three systems today. I look at this from a records standpoint. We are doing information collection. We are collecting lots of information and with tribal funds it is critically important that we bring the systems together. A cave in Kansas nice but we haven't voluntarily put one record in since 1987. The cave represents outdated information we don't feed into. We do need to talk about what merging OST into BIA really means. There needs to be models. We are talking about renewing relationships with BIA and tribes. There is by necessity more of a partnership – look at models to complete the merge. Partnerships need to be reestablished because there are ceilings on funding. So far budgets not hurt but after elections it is uncertain. The reality is accept change and design things in a way that provides the greatest opportunity for Indian Country to engage in the way it would like to - by bringing those funds in a joint tribal-federal partnership. Partnership is not to be ignored. Probates – it is critical to look at fractionated ownership today and the specific problem of probate judges. If there are no judges, there are no fractionations. We need to get probate judges to stop feeding into fractionation. Get judges to operate in tribal forums. Downsizing OST budget. It has been said that a budget is needed to reform the management of the trust. I am really concerned that people are making decisions to dismantle trust programs. We don't want shell [organization] without funding to carry out [the mission]. If there is a concern of liabilities that tribes create for the federal government look at the number of breach of trust cases. Partnerships lessen the number of the breach of trust cases. We are the most vested people in making sure land, reservations, fees, and trust issues are addressed. We have got to bring our assets back into tribal control. If we get back to unravel some of these things that make a difference we can fix this. It does require partners.

Helen Sanders, Indian Land Working Group and original allottee. I highly oppose that OST become part of BIA. Reasons: as an [OST] Board Member I have seen the OST facility in Albuquerque and the type of people who work there. There are professional people working there and I don't want to see that lost. I have been to the cave and I don't know any place where you could protect records any better. Natural disaster is not going to affect records. I agree that current documents should be sent there. I wouldn't want to see it deteriorated.

Cris Stainbrook, Indian Land Tenure Foundation. The issue of permanent structures being declared fee property instead of trust property is important. By separating the structure from the land it mires things

down even more. The federal government is precluded by statute from buying fee property. What appraisals are going to be done? Who would maintain the title on fee property? This raises questions around if these properties go from tribes to federal government will they be receiving properties with out leases? How will they deal with that? Forced leased process? Assignments?

Allan Parker, Chippewa Cree and faculty member at Evergreen State College. Glad I made it back for summary discussion. I want to reinforce and support the comments that there has been such a movement across Indian Country regarding the opportunity given by tribal self-governance. If you go to tribalselfgov.org you will see which tribes from across the country have purposed and entered into compact agreements vs. contract agreements (i.e., procurement contracts). Tribal leaders came to us saying, "We have to get out from under contracting. We are not being treated as governments, but as contractors." This inspired the bill and program of tribal self-governance. Over 300 tribes are part of this movement and it is expanding. The fact that there is such a movement and in front of us an opportunity to reform trust responsibility at the same time, there are risks. I think that the question that needs to be answered is what is the role of the BIA as trustee? I wrote a two pager to Chair Sharp pointing out that BIA has had a bunker-down mentality for the entirety of the Cobell case. How did they conduct duties and carry on business while protecting against legal liabilities of the case? There are some loose ends but the Commission can move forward with work. If you are student of human nature you can see when an institution like BIA is operating with a cloud overhead. Many tribes represented by breach of trust cases – eight or nine with NARF. Now is the time to pursue these. That is the other thing the Trust Reform Commission has before it. You also have questions regarding BIA as trustee of tribal resources and assets. The Commission is off to a good start and covered a lot of things and addressed really important issues. I am breathing a sigh of relief I am not on the Commission because it is a huge job.

A. Gay Kingman, Great Plains Tribal Chairman's Association and member Cheyenne River Sioux.

Diversity doesn't mean the views are right or wrong. Most tribes are direct service tribes and have chosen not to be self-governed. I do agree with Danny, we do have three entities operating but like my friend Pat, I can't throw the baby out with the bath water because OST has done good things. If the Commission is taking up the merge issue I would really like you to consider keeping the good things but that takes a really detailed look at things. I don't know how much staff will be available for this but is a big consideration. In the Great Plains we have a clear directive that we do want everything moved back to BIA. We opposed this at the very beginning because everything is local. When you remove this from us our tribal leaders council couldn't go up the street to talk to the superintendent. It is too cumbersome for tribal leaders especially with three million acres of land at Pine Ridge and two million in Cheyenne River. Getting to district towns is cumbersome. Getting to towns is difficult let alone creating business centers. I applaud what the Commission is doing. Please look at the diversity among regions.

Eric Solis of Micro TA representing the Seneca-Cayuga Tribes of Oklahoma. Think differently of how to use technology. Third world nations leaped over early steps and use the very best of technology. It is easy to make mistakes to create solutions based on a generation that doesn't know technology. Build out platform that the next generation will engage in. We don't necessarily get the existing ways things are happening and how we can pull out information that has not been acceptable. That is the kind of model that would work well for Indian Country – information and knowledge create opportunity. I am a voice of encouragement to look at technology. Those that don't have access will be the beneficiary of those that do. The point of contact is much closer. If your grandchildren know how to access information it is easier for grandparents to access them than to get to DC.

DFO Gillette: Sometimes we are so focused on technology and there are physical reasons some people cannot connect in rural areas - rural areas where elders live. There is a big policy question that comes into play when talking about communication.

Allene Couttier, Oglala Sioux, Pine Ridge, SD. We drift back into administration and management very quickly whether capacity with tribe or whatever. This doesn't deal with the overriding, with what is trust and responsibility and how is it administered? If that isn't communicated it gets lost and continues to get lost in a mire of administration. Once the trust is understood, is it in perpetuity or does it have a termination date? This is a serious issue to consider as we move forward. We need to know that and understand the implications - understand how it evolves and grows.

Proposed Operating Protocols

Sarah Palmer, USIECR, reviewed the draft operating protocols. She referred the Commissioners to the handout of the draft protocols and noted that the PowerPoint is available for audience members. The full presentation can be found on the Commission [website](#). The operating protocols were created from other negotiated rulemaking and FACA committees that operate by consensus. The intent is to set up operating procedures for how the Commission works. Ms. Palmer indicated that this might be more detail than the Commission may have been expecting. The intent is for the operating procedures to explain the concepts behind interest-based collaboration and around reaching consensus. The draft protocols cover the array of possible scenarios. Some scenarios include for example, the expectation to notify one another if you, or the groups you represent, are going to initiate a legislative or litigation that impacts the Commission. Another tenant is that the Commission works together to solve issues at the lowest level possible. Commissioners were asked for their feedback.

Commissioner Response to Draft Operating Protocols

Commissioner Anderson: I've read it and find nothing objectionable.

Commissioner Leeds: I move we approve as is.

Chair Sharp: This is something we can always come back to and this is a base to adopt. Any objections to use this as a measure?

The operating protocols were adopted by the Commission and are available on the Commission [website](#).

Overview and Detailed Discussion of Purpose of the Commission and Draft Work plan

Sarah Palmer, USIECR, facilitated the discussion of the work plan. She asked the Commission to start with version two, as it is easier to navigate. Ms. Palmer reviewed the Commission purpose and work plan with Commissioner suggestions and comments coming throughout the conversation.

Commissioner Leeds: In private conversation we [Commissioners Leeds and Anderson] have come to the conclusion that we have students who are interested in working on this and that we should utilize these resources. This will leave the higher-level information for the management consultant. We can tease out on an administrative call the higher-level tasks for the consultant.

Sarah Palmer: A new task is to tease out the tasks for students and a literature review. The USIECR will send a Doodle to determine times for an administrative call in April.

Chair Sharp: Information regarding the recommendation for termination of OST – what was the statutory intent and how well did OST implement the statutory role? What are the outliers, things that are extraneous? This is a subject of oversight.

Commissioner Anderson: In 1995 or 1996, there was an Associate Solicitor opinion to OST that was cited in the first Cobell litigation regarding the review and understanding of the OST role. We will have to review this to determine whether or not the standards were met. We might want help from the consultant to determine whether requirements are being carried out.

Chair Sharp: There is another opportunity for stories that have not been told, recorded. We need to consider what is not recorded.

DFO Gillette: There are a number of organizational assessments currently underway. You can scope the assessment however you want; we are most familiar with the current. They spent a lot of time talking to tribes looking at process and perception. These could be useful because in all honesty if you ask the Department you will get a Department answer. If you get the consultant to analyze from an objective viewpoint they could possibly pattern ongoing efforts. I am a big proponent of third party, objective eyes providing an assessment.

Chair Sharp: The crux is evaluating the problems and the symptoms. We don't know the relationship between the consultant and the Commission and we need to consider the communication structure. This is something to think about and have options for the next meeting.

DFO Gillette: When considering the overall input given to the Commission and the analysis that has to take place, that information has to get processed and put somewhere. There should be a facilitator or somebody going out with you so they recognize patterns and can do the analysis. We want to make sure it's captured.

Sarah Palmer noted that the DOI Team and USIECR will work on a draft budget and what is realistic for the duration of the process. She also clarified the purpose of administrative call is to prepare for the April open to the public call. The Commissioners need to determine what they want from the webinar so that this can be discussed on an administrative call.

The Commission agreed to set a quarterly schedule for calls and webinars. The USIECR will send a Doodle to assist in the scheduling of these calls and webinars.

DFO Gillette: At any time it is mindful to not overload your schedules and to be efficient and reevaluate as needed. Let us know how to best accommodate what is needed from the Commission.

Chair Sharp: In April, one of the major charges is to have field hearings. There is a component that we are out in the field and there is an opportunity to hear from the stakeholders. The Commission can discuss in March or April the structure/form/purpose/intent of field hearings. It is logical to put out in first communication when the field hearings are to occur. We always need to keep the Charter in mind.

DFO Gillette: Proposed communications or field hearing plan is not only work of the Commission but encompasses the consultation, communication, and collaboration you will be doing with stakeholders. This includes a component for press. You need to consider how we would operate and options for big

meetings in the next quarter, how to be efficient, and be mindful to get something out there. This is a good agenda item for the next call.

Chair Sharp: Field hearings are an opportunity to get perspective on what we are doing and another purpose is to create an open venue to do fact finding that becomes part of another report in real time. It is a state of tribal trust hearing. I am trying to give thought to the best structure of field hearings and will be getting input on work and tasks. This is an opportunity for fresh fact finding and information on rest of our work.

Commissioner Zah: This is all good and fine except I don't want to do so much that is so complicated that nobody understands. The Bureau is the only one that understands that. Seems like other constituents don't know. In our area they already have a system – we need to use that to plug in. This shouldn't be something we ignore - tap into what's in existence.

Chair Sharp: When we do go out we have to have very defined and precise questions that give us valuable information to help in completing our charge.

Commissioner Leeds: The Department of Treasury, Department of Agriculture, and OMB are important to hear from. Maybe that can provide an update at the May meeting.

Members of the DOI Team will determine who contacts are in these Departments and reach out to see if they would be willing to present at a Commission meeting.

Commissioner Anderson: It is important for the Secretary's office to make contacts and communications regarding the importance of having speakers meet with the Commission.

Chair Sharp: When we do convene webinars and folks send in questions or email, we need to make it standard practice that if we have participants we have received their written comment and then by next webinar we respond back. How will we do this? This needs to be included in the communications plan.

Commissioner Leeds: We need a website for sharing of information and online submission of ideas that would shield us from inquiries.

DFO Gillette: Emails can be sent to trustcommission@ios.doi.gov. Michele do you have any suggestions for rules of engagement?

Michele Singer: We encouraged members of committees to engage and they did conference calls. Items from the public were sent to the DFO and then distributed to the Commission.

Chair Sharp: We should finalize the research subcommittee with Commissioner Leeds and Commissioner Anderson to work with their students. **The Commission approved this.** I would also propose a subcommittee to look at the broader picture of the trust relationship with the U.S. – there is a lot of work to fix the past but we need to look forward to the future and reaffirming trust. Chair Sharp will lead the subcommittee and Commissioner Anderson will serve. **The Commission approved this.** We will work on a product to share internally with the Commission. I would like to see a subcommittee that looks at other types of trust models outside of Indian Country, like social security, etc., and to look at structures of other models. Commissioner Leeds and Commissioner Zah will serve on this subcommittee. **The Commission approved this.** The subcommittees will provide updates at each call and webinar

regarding progress. I will call Commissioner Hall and see how he would like to participate in subcommittees.

Commissioner Leeds: Once one or two of us are on a subcommittee what is the freedom to engage others as members?

Response: You may do so as long as there is no conflict of interest. Report to the DFO who is engaged on the subcommittees so there is transparency regarding this.

Chair Sharp: For the next meeting each chair of a subcommittee will provide a clear charge statement.

Sarah Palmer: The facilitation team will update the work plan and communications plan and send to the Commission for review prior to the next meeting. Bridget and I are honored and delighted to support the Commission. We want to disclose that the US Institute, a program of the Udall Foundation has a Board of Trustees. The Chair of the Board is Mr. Eric Eberhard, whom I know some of you have a relationship with outside the Commission. I wanted to let you know this and that share that the Institute has a firewall between the Board of Trustees and the staff so that the Board members cannot influence our work. Please let me know if there are any concerns about this.

Ms. Palmer reviewed the action items from the meeting.

Commissioners were asked to provide their feedback regarding what should be included in the press release. Their thoughts included:

- The tone of the interaction sets the tone for the Commission. We have a lot of work to do to focus in on and if this is any indication, I am very optimistic.
- We listened to presentations so we can get total picture before we can make any major decision. This is a learning process for me and majority of the Commission. Sometimes you have to make a major decision and find out the same issue is repeated somewhere else with another agency.
- The Commissioners are getting to know each other – good to feel each other out, where we stand, where we come from. Will be helpful to have cohesive group to make major decisions ahead. Can't get to those amicably until we get to know each other.
- We stand in partnership with the Secretary.
- The Secretary mentioned looking at the Northern Star. This Commission is very dedicated after last two days at what is true north and very committed to not only looking at trust reform but looking well beyond this at broader issues. We came at this with the same mindset of the Secretary.

Audience Comments

- 1) Wherever there is tribal consultation there is encouragement to meet with tribes, tribal organizations, and individual allottees.
- 2) I would like to mention for your consideration that if you would like to have a visit, the Pine Ridge reservation is close by the Rapid City meeting location. The OST office is in Rapid City and could set up a visit there to see the financial operations.
- 3) On behalf of the tribes we thank you for the tasks you have taken on and the tribes appreciate it very much. We have great confidence in the commission. Thanks to the DFO and the DOI staff for their work.

- 4) Please encourage tribe engagement.
- 5) The last 20-30 years the government has agreed to pay over \$6.5 billion dollars for past activities. In every case the settlement is for something that should or shouldn't have happened. It was no secret that it wasn't happening. Those who knew actively concealed what they were doing. The slides are full of activities of the trust administration. If a culture of trust is missing keep in mind that the Department has been full of liability avoidance over the last few years. Is this attitude a presumption of failure? Proposed regulations have statement of improvements not subject to action by state or local governments. An earlier statement that the Department published says it is policy of the Department that permanent improvements to trust property are not trust property. Many find this a remarkable proposition. It is driven by liability avoidance. If we look at what it means I suggest it means that a whole lot of what we are doing is almost cruel. We say we want to reform. This may be a topic for another Cobell -like lawsuit if we are not willing to pay for value of lands. These are leased lands; those not leased are subject to taxation. I ask you to consider the culture of trust and whether liability avoidance motives are inconsistent with a culture of trust. This is an opportunity to help the Secretary avoid embarrassment. It might be the subject of an interim report. I want to echo thanks and good luck! If any of us can be useful, please reach out.

Commissioner Zah closed the meeting with a prayer. Chair Sharp adjourned the meeting.

Appendix A. List of Acronyms

ArcGIS	GIS Mapping Software
ATNI	Affiliated Tribes of Northwest Indians
BIA	Bureau of Indian Affairs
BOR	Bureau of Reclamation
CADR	Office of Collaborative Action and Dispute Resolution (DOI)
CTMP	Comprehensive Trust Management Plan
DFO	Designated Federal Officer
DOI	Department of the Interior
DOJ	Department of Justice
EOP	Explanation of Payment
ESRI	Technology Company Developing GIS Tools
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
FTM	Fiduciary Trust Model
GIS	Geographic Information System
GPTCA	Great Plains Tribal Chairman's Association
HLIP	High-level Implementation Plan
IA	Assistant Secretary for Indian Affairs (DOI)
IIM	Individual Indian Money
ILWG	Indian Land Working Group
ITMA	Intertribal Monitoring Association on Indian Trust Funds
ITT	Information Technology Trust
LCC	Landscape Conservation Cooperative
LTRO	Land Titles and Records Office
MOU	Memorandum of Understanding
NARF	Native American Rights Fund
NCAI	National Congress of American Indians
NCLB	No Child Left Behind
NIFRMA	National Indian Forest Resource Management Act
NRCS	Natural Resources Conservation System
NRDAR	Natural Resource Damage and Assessment Restoration
OEA	Office of External Affairs (OST)
OHTA	Office of Historical Trust Accounting
OITT	Office of Indian Trust Transition
OMB	Office of Management and Budget
ONRR	Office of Natural Resources Revenue
OST	Office of the Special Trustee for American Indians
OTRA	Office of Trust Review and Audit
PSA	Public Service Announcement
RACA	Office of Regulatory Affairs and Collaborative Action (IA)
SOL	Office of the Solicitor
TEK	Traditional Ecological Knowledge
TFAS	Trust Fund Accounting System
USET	United South and Eastern Tribes Incorporated
USIECR	U.S. Institute for Environmental Conflict Resolution

USGS

U.S. Geological Survey

Appendix B. Trust Commission Meeting 1 Attendees

Name	Affiliation	Thursday March 1	Friday March 1
Commission			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Alan Parker			X
Alec Agoyo	Indianz.com	X	
Allene Cottier	Oglala Lakota	X	
Anthony Morgan	OST		
Rodman			X
Anthony Walters	DOI ASIA	X	X
Brian Block	OST		X
Bridget Radcliff	USIECR Facilitator	X	X
Bryan Rice	BIA		X
Caroline Mayhew	Hobbs Straus Dean & Walker LLP	X	X
Charlotte Hicks	Upper Mohawk, Inc	X	X
Cris Stainbrook	Indian Land Tenure Foundation		X
Crucita Grover			X
Daniel Jordan	Hoopa Tribe	X	X
David Harrison	Osage/ITMA/ILWG	X	
David Hayes	Deputy Secretary of the Interior	X	
Debby Pafel	OST		X
Don Grove	Nordhause Law Firm	X	
Don Grove	Nordhaus		X
Donna Erwin	OST	X	X
Dr. Peterson Zah	Commissioner	X	X
Ed Holland		X	X
Ed McDonnell	DOI Solicitor's Office	X	
Elena Gonzalez	DOI CADR Facilitator	X	
Elizabeth Appel	Acting Director, Office of Regulatory Affairs and Collaborative Action, Indian Affairs	X	
Eric Solis	Seneca/MicroTA	X	X
Fawn Sharp	Chair	X	X
Helen Riggs	OST	X	X
Helen Sanders	ILWG	X	X
Hilary Tompkins	DOI Solicitor	X	
Jason Bruno	OST	X	X
Jodi Gillette	Designated Federal Officer	X	X
John McClanahan	OST	X	X
Kallie Hanley	Special Assistant to the Secretary	X	
Karla General	Indian Law Resource Center	X	
Kristen Wright	DOI Office of Budget		X
Lee Frazier	OST		X
Leroy Jackson	Hoopa Valley Tribe	X	X
Levi Rickers	Native News Network		X

Lizzie Marsters	Chief of Staff for Deputy Secretary Hayes	X	X
Marcella Burgess Giles	ILWG	X	
Mark Davis	Counselor to the Action PDST, OST	X	X
Mary Zuni	ITMA	X	
Matthew Kelly	Fredericks Peebles & Morgan	X	X
Michael Black	Director, BIA	X	X
Michele Singer	Acting Principal Deputy Special Trustee, OST	X	X
Nick Kryloff			X
Pamela Haze	DOI Deputy Assistant Secretary PMB	X	
Patricia Gerard	OST	X	X
Patricia Marks	Fredericks Peebles & Morgan/MHA/Ute	X	X
Paul Morrehead	Various Tribes & Tribal Organizations	X	
Regina Gilbert	AS-IA/RACA	X	X
Robert Anderson	Commissioner	X	X
Ron Suppah	Vice Chair, Confederated Tribes of Warm Springs	X	X
Ross Swimmer	Swimmer Group, LLC	X	X
Saman Hussain	DOI CADR Facilitator	X	X
Sarah Palmer	USIECR Facilitator	X	X
Secretary Salazar	DOI	X	
Stacey Leeds	Commissioner	X	X
Tiffany Taylor	Chief of Staff, Deputy Assistant Secretary Management, Indian Affairs	X	X
Tim Murphy	DOI Solicitor's Office	X	

Appendix C. Information Requests from Commission

Commission Request	Agency Contact	Product to be Developed
How does land consolidation apply in Alaska?	Darryl LaCounte, BIA	Clarification statement on the laws regarding trust lands.
Where is the DOI Staff Directory?	Lizzie Marsters, Office of the Secretary	Update on where directory is now found.
Comments from six-week BIA reorganization consultation sessions.	DFO	Summary of comments in matrix.
Interviews with one or two OST lawyers.	Michele Singer, OST	Provide names and contact information for counsel OST works most closely with
Breakdown of tribes with trust accounts.	Michele Singer, OST	Breakdown will be provided, as appropriate.
Comprehensive review of all issues related to trust responsibilities.	Research Subcommittee and BIA	Literary review and summary of background materials.
1995 or 1996 Associate Solicitor report re: review of OST.	OST	Provide opinion of Solicitor.

Appendix D. Documents Distributed and/or Presented at Commission Meeting

- Agenda
- FACA presentation
- Charter
- Secretarial Order
- Draft Commission work plan (version 1)
- Historical Overview of Trust Reform Efforts presentation
- Index and CD provided to Commissioners
- Use of Independent Facilitator presentation
- Ongoing BIA Trust Reform Work presentation
- OST On-going Efforts with Trust Reform presentation
- Proposed Operating Protocols provided to Commissioners
- Draft Commission work plan (version 2) presentation

Appendix E. Summary of Commission Meeting Action Items

TASKS	LEADS	COMPLETE BY
COMMISSIONERS		
Contact Commissioner Hall to confirm availability for 2012 Commission meeting dates and interest in any of the subcommittees (see below).	Chair Sharp and Jodi Gillette	ASAP
Send eight points about trust relationship, send to Bridget for inclusion in meeting summary	Chair Sharp	ASAP
Research Subcommittee: A. Identify members and notify Jodi. B. Develop charge, specific tasks, draft products, anticipated timeline to share with Commission	Commissioners Anderson and Leeds	Update at March administrative call, Report at April Commission call
Trust Relationship Subcommittee A. Identify members and notify Jodi. B. Develop charge, specific tasks, draft products, anticipated timeline to share with Commission	Chair Sharp and Commissioner Anderson	Update at March administrative call, Report at April Commission call
Trust Models Subcommittee A. Identify members and notify Jodi. B. Develop charge, specific tasks, draft products, anticipated timeline to share with Commission	Commissioners Zah and Leeds	Update at March administrative call, Report at April Commission call
Identify a possible set of questions to ask in letter to tribes, individual Indians, and tribal organizations.	Each Commissioner	March Administrative call
Review and provide corrections to March 1-2 draft meeting summary	Each Commissioner, DFO	April 15
DOI TEAM		
DOI Team Staffing: A. Define internal roles, topic leads B. BIA staff to provide subject matter expertise when requested by Commission C. Identify key point of contact to coordinate OST expertise with Michele Singer D. Identify key point of contact to assist Jodi Gillette (DFO) as needed E. Identify staff to prepare press releases etc. F. Identify staff to receive responses to Commission letter to tribes, analyze comments in letters, prepare summary to Commissioners in June	A. Saman Hussain draft, circulate to team to finalize B. Mike Black C. Michele Singer D. Jodi Gillette E. Jodi Gillette, Lizzie Marsters F. Jodi Gillette;	March 16

	Michele Singer; Mike Black; Lizzie Marsters; Kallie Hanley	
<p>OST Presentations Follow-up and Additional Information to Share with Commission:</p> <ul style="list-style-type: none"> A. Provide breakdown of IIM accounts by tribes and region B. Pull reports focused on overall reviews of OST and specifically reports related to statutory function of oversight, strategic plan and three year review and progress, 1995 associate solicitor's opinion re OST C. Reports and information on tribal and individual accounts D. Provide summary report of recommendations from OST advisory board E. Provide names of lawyers in SOL working on OST issues 	Michele Singer, Mark Davis, other staff TBD	April call
<p>BIA Presentations Follow-up and Additional Information to Share with Commission:</p> <ul style="list-style-type: none"> A. Provide Commission information about Alaska Native lands consolidation issues B. Provide Commission the FR notice and 'Dear Tribal Leader' letter announcing consultations on FY2013 streamlining. <ul style="list-style-type: none"> a. Share the analysis of comments from forthcoming April, May consultations C. Follow up with Solicitor's Office to identify number of trust cases currently underway, being heard 	<p>Mike Black</p> <p>Tiffany Taylor? RACA Office (Regina and Liz)</p> <p>TBD</p> <p>Jodi Gillette</p>	<p>April call</p> <p>April call</p> <p>June Commission Meeting</p> <p>March Administrative call</p>
OST and BIA: Provide number of acres and which tribes in 638 and compact	Michele Singer, Mike Black, Bryan	April call
<p>Update Commission Website:</p> <ul style="list-style-type: none"> A. Post meeting 1 presentations and products, including "index to background materials on Indian Trust Management Reform" documents B. Post overall summary of reports on website 	<p>A. Regina Gilbert, Liz Appel</p> <p>B. Regina Gilbert, Liz</p>	<p>A. April</p> <p>B. April</p>

<p>C. Set up listserv account for people interested in receiving information about Commission</p> <p>D. Research if the website can include a secure online workspace for Commissioners, if not discuss options with/through Institute</p> <p>E. Instructions for public to engage Commissioners to ensure consistency with FACA</p>	<p>Appel</p> <p>C. Jodi Gillette</p> <p>D. Lizzie, Office of Secretary</p> <p>E. Facilitation team draft, circulate to DOI for refinement</p>	<p>C. Week of March 5</p> <p>D. March admin call</p> <p>E. March admin call</p>
Confirm records for subcommittee meetings	Jodi Gillette, Tim White	March administrative call
Draft budget (with inputs from Institute, DOI team), and identify options to fund Commission work	Tiffany Taylor, others in DOI	March administrative call
<p>Contracted Experts/Evaluators</p> <p>A. Determine if there can be multiple subject matter consultants (as contractors)</p> <p>B. Research how independent studies/consultants may be selected e.g., RFPs other mechanisms and map out options (map out process for April call)</p> <p>C. Develop options for a scope of work</p>	<p>A. Tiffany Taylor and Jodi Gillette</p> <p>B. Tiffany Taylor</p> <p>C. TBD</p>	<p>March administrative call</p> <p>March administrative call</p> <p>Post March-Admin call</p>
<p>Contact Treasury, USDA, OMB to invite speakers for May Commission call/webinar.</p> <p>Treasury and OMB regarding other trust models, and...?</p> <p>USDA regarding....(need clarification from Commissioner Leeds)</p>	Kallie Hanley, Lizzie Marsters	After March administrative call, in prep for May Commission call
Outline proposed process for Commission field hearings, share approach with Commissioners	DOI Team with US Institute process input	May Commission call
US Institute Facilitation Team		
Schedule debrief call with DOI	Bridget Radcliff	Week of March 5
DOODLE Commissioners and DOI for April and May webinars	Bridget Radcliff	Week of March 5
Draft and distribute March 1-2 meeting action items	Sarah Palmer, Bridget Radcliff, Regina Gilbert	Week of March 5

Draft accomplishments talking points, circulate to DOI and Commissioners	Sarah Palmer	Week of March 5
Finalize operating protocols, distribute	Sarah Palmer	Week of March 12
Draft next iteration of work plan, communications plan.	Sarah Palmer	March admin call
Draft ITC budget for Facilitation support, coordinate with Tiffany, Mark, Regina	Sarah Palmer, Bridget Radcliff	Week of March 12
Draft March 1-2 Meeting Summary, distribute to Commissioners, DFO for review	Bridget Radcliff	March 23
COMMISSION DOI FACILITATORS		
Full Commission conference call and webinar to: <ul style="list-style-type: none"> A. Updates from Subcommittees B. Draft letter to tribes, individual Indians, tribal organizations C. Revised, refine work plan and milestones D. Discuss Commission budget including budget for contractor(s)/evaluators E. Discuss, refine draft scope of work for contractor/evaluator 	Commissioners, DFO, DOI team, US Institute	Mid/late April